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FORTNIGHTLY CASE LAW BULLETIN

(01-01-2024 to 15-01-2024)

A Summary of Latest Judgments Delivered by the Supreme Court of Pakistan & Lahore High Court, Legislation/Amendment in Legislation and important Articles

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

		Article 8(5) of the Constitution if proclamation of emergency is in field; Existence of proclamation of emergency without order under Article 233(2) of the Constitution; Suspension of all fundamental rights when proclamation of emergency is in field; Clauses (i) & (ii) of section 2(1)(d) and subsection 4 of section 59 of Army Act would be ultra vires even during proclamation of emergency; Arrest of a civilian or seeking his custody by an authority acting under the Army Act; Validating clauses; Regarding section 59(4) as validating clause; Trial of a civilian by a court martial		
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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Jawwad S.Khawaja etc. v. Federation of Pakistan etc.
Constitution Petition Nos.24, 25, 26, 27 & 28 and 30 of 2023
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/const.p._24_2023_f.pdf

Facts: The Petitioners challenge the vires of Section 2(1)(d) and Section 59(4) of the Pakistan Army Act, 1952 (Army Act) being ultra vires the Constitution and also seek a declaration that the decision of the Federal Government to try civilians with respect to the events of 9th and 10th May, 2023 by military courts under the Army Act read with Official Secrets Act, 1923 (Official Secrets Act) as being unconstitutional.

Issues: i) What are different modes in which Constitution may operate?
ii) When any person can be made subject to Army Act in view of 2(1) (d) (i) of Army Act?
iii) What is requirement under section 2(1) (d) (ii) of Army Act for making civilian subject to Army Act?
iv) What is effect of any civilian becoming subject to the Army Act?
v) Whether in necessary implication of F.B. Ali case court martial and military justice system are within scope of legislative competence of entry No. 01 of Federal List?
vi) Whether courts martial as presently conceived and understood for historical reasons stand outside the framework of Article 175 and cannot be constitutionally attacked or challenged with reference thereto?
vii) What is genesis of Article 8(3)(a) of Constitution?
viii) What conditions must be met for application of provisions of Article 8(3)(a) of Constitution?
ix) Whether constitutions of 1956, 1962 & interim Constitution of 1972 had provisions similar to Article 8(3) (a) & 8 (5) of present Constitution?
x) If clauses (1) and (2) were already, and always, there, what purpose does clause (5) serve in Article 8 of present Constitution? And What, if one may put it so, "value" does it add?
xi) Whether the protection afforded by Article 8(5) is just when a breach has actually occurs or it is also anticipatory?
xii) What is a two-step consideration for claim of denial of or derogation from fundamental rights?
xiii) Whether clause (3)(a) on the one hand and clause (5) on the other (of Article 8 of Constitution) stand not just in contrast but in direct opposition?
xiv) Whether clauses (i) & (ii) of section 2(1) (d) and sub-section 4 of section 59 of Army Act are ultra vires the present Constitution with particular reference and regard to clause 5 of Article 8?
xv) Whether additional rights granted under any statue i.e. Army Act can alter

their essence from statutory to fundamental rights?
xvi) Whether existence of a legislative competence and the (constitutional) ability to exercise it are necessarily coterminous?
xvii) Whether any law such as clauses (i) & (ii) of section 2(1) (d) and sub-section 4 of section 59 of Army Act can be now made without passing through the sieve of Article 8(5) of Constitution?
xviii) Whether Article 8 (3) (a) of constitution ought to be interpreted to effectively splits into standalone portions?
xix) What is correct approach to apply provisions of Article 8(3) (a) of Constitution?
xx) Whether civilians can directly be dragged into ambit of Article 8 (3) (a) by reason of Article 8(5)?
xxi) What is nature of section 59(4) of Army Act and does it have independent or standalone purpose/existence?
xxii) Whether Article 8(5) of Constitution ceases to apply if proclamation of emergency is in field and Article 233(1) of Constitution becomes applicable?
xxiii) Whether proclamation of emergency exists without Order under Article 233(2) of Constitution?
xxiv) Whether all fundamental rights are considered to be suspended when proclamation of emergency is in field?
xxv) Whether even during proclamation of emergency clauses (i) & (ii) of section 2(1) (d) and sub-section 4 of section 59 of Army Act would be ultra vires of Constitution?
xxvi) Whether arrest of a civilian or seeking his custody etc. by any authority acting under the Army Act prior to charging a person for an offence that falls within either of two sub-clauses of section 2(1) (d) of Army Act would be lawful?
xxvii) What are validating clauses?
xviii) Can section 59(4) of Army Act be regarded as a validating clause thereby covering the prior (illegal) acts done in relation to the civilian who is charged for an offence before a court martial?
xxix) How could a civilian ever be brought before and tried by a court martial for an offence under the clause (d) provision?

Analysis: i) For present purposes the Constitution may be regarded as existing and operating in either one of two primary "modes" or states. The first is its operation in the ordinary course, which may be regarded as the "default" mode. The other is when it operates in a time when there is in force a Proclamation in terms of Part X, the Emergency Provisions. There is also a third, though secondary, state or "mode" in which the Constitution may operate. That is when the Federal Government, in lawful exercise of its powers under Article 245, has called upon the Armed Forces to act in aid of civil power, or the Armed Forces are, under the directions of said Government, defending Pakistan against external aggression or threat of war. This secondary state may exist and operate in either of the two principal "modes".
ii) Subsection (1) of s. 2 lists the persons who shall be subject to the Army Act…

As the word "accused" indicates, a person not otherwise subject to the Army Act becomes so subject only if he (or, to say it once and for all, she) commits a criminal offence that falls in either of the sub-clauses. Offences in this country are statutory in nature. Therefore, for clause (d) to at all become applicable, anyone seeking to subject a person (hereinafter for convenience referred to as a "civilian") to the Army Act in terms thereof, has to show some statute and some provision of such statute creating a criminal offence, as complies with either of the sub-clauses. However, the path to subjection in terms of each sub-clause is different. Sub-clause (i) does not identify any statute as such. It only gives a description of the offence. Therefore in principle any statute which creates an offence the ingredients or elements of which match the description could result in the civilian becoming subject to the Army Act. The importance of this lies in the fact that the same offence (i.e., having the same ingredients or elements) can be created by more than one statute. This is in fact true of the description contained in sub-clause (i). There are at least two such statutes (which were both referred to and considered in F.B. Ali case). One of these is the Army Act itself, which has an offence fitting the description in its s. 31(d). The other is s. 131 of the Pakistan Penal Code. In material respects each of these offences matches the other, and the description given in sub-clause (i).

iii) Sub-clause (ii) takes a different approach. It identifies the statute where the offence must be created and located. This is the Official Secrets Act, 1923 ("1923 Act"). But the sub-clause has two requirements, which result in two consequences. Firstly, not only must the offence be under the 1923 Act, its ingredients or elements must also fit the description given in the sub-clause. In other words, it is not every offence under the 1923 Act that can make a civilian subject to the Army Act. It is only that offence which fits the stated description. Any other offence, if committed by a civilian, would not make him subject to the Army Act. Secondly, if there is any other statute (including, though that is not in fact the case, the Army Act itself) that creates an offence the ingredients or elements of which match the description, such offence, if committed by a civilian, would not make him subject to the Army Act.

iv) The effect of any civilian becoming subject to the Army Act by reason of either sub-clause of clause (d) is of course that he becomes subject to the whole of the statute. In practice, the principal consequence ensuing from such subjection is that he becomes liable to be tried for the relevant offence by court martial under the Army Act.

v) Even F.B. Ali itself points in the same direction, and corroborates the historical nature of the legislative competence. The competence for the insertion of clause (d) in s. 2(1), whereby civilians could be tried by courts martial, was found to exist in entry No. 1 of the Third Schedule to the 1962 Constitution. This corresponded to entry No. 1 of the present Federal List. Now, the trial of civilians by court martial is very much an ancillary or subsidiary function of such forums. Existing as they do within the military justice system, and confined as they are to the four corners of the Army Act, the principal function (indeed, their raison

d'être) is to deal with the members of the Armed Forces. Even if there were no legislative competence in relation to civilians that would leave the functioning and operation of the military justice system, and of the courts martial, wholly unaffected. The subsidiary nature of the legislative competence with regard to civilians is further indicated by the fact that in F.B. Ali the Court also pressed entry Nos. 48 and 49 into service (which related respectively, to matters within the legislative competence of the Federation or relating thereto, and matters incidental and ancillary to others provided in the Schedule). These entries corresponded to the present entry Nos. 58 and 59 of the Federal List. Thus, a necessary implication of F.B. Ali is that courts martial, and the military justice system, are within the scope of the legislative competence of entry No. 1; and that conclusion is in line with Muhammad Yusuf, as revealed by the historical analysis.

vi) In the present context, the challenge in terms of Article 175 to courts martial is of no avail. However, a word of caution may be sounded. This does not at all mean that there cannot be rights of appeal or other remedies to courts within the meaning of Article 175, from decisions of courts martial or other authorities and forums within the military justice system, or that such system cannot at some stage itself be directly connected with such courts. Far from it. All that is meant is that courts martial as presently conceived and understood, with which alone we are here concerned, for historical reasons stand outside the framework of Article 175 and cannot be constitutionally attacked or challenged with reference thereto. But, it is wholly within the legislative competence of Parliament to restructure or even recreate the military justice system, including courts martial, in such manner—howsoever fundamentally or even radically different it may be from the present one—as it deems appropriate. History certainly informs the legislative competence but, constitutionally speaking, neither shackles nor controls it.

vii) The genesis of Article 8(3)(a) lies in the well-recognized fact that given the peculiar nature of the tasks that must be performed, in particular and especially, by members of the Armed Forces but also by certain other agencies (which are usually referred to as the "disciplined forces"), it is infeasible to allow them, in the context of the performance of their duties, to enjoy the benefit of fundamental rights. Members of the Armed Forces and the disciplined forces are of course citizens and, in the ordinary and normal course, as much entitled to fundamental rights as any other citizen. That is the general rule. However, in relation to certain set and limited circumstances a differentiation ought to be made between them and the general citizenry Undoubtedly, the members of the Armed Forces and the disciplined forces come from and return to the citizenry. But, while they are in service (and also, exceptionally, when they may by law be recalled to such service) the peculiarities of that service require derogation from what is otherwise their birthright, as a fundamental and constituent aspect of the Constitution.

viii) It will be seen that for this provision to apply two conditions must be met. Firstly, it applies to a law made in respect of three categories of State employees: (i) members of the Armed Forces; (ii) the police; and (iii) any other force that is

charged with the maintenance of public order. Secondly, even in relation to such categories, the purpose of the law must be to either (x) ensure the proper discharge of their duties, or (y) maintain discipline among them.

ix) It will be seen that the provision has essentially remained unaltered throughout. Apart from the specific reference to the police in the Interim Constitution and the present Constitution, the words used are virtually identical. This is certainly true for the purpose of the law, i.e., the proper discharge of duties and the maintenance of discipline. Furthermore, in both the 1962 and Interim Constitutions, the provision is rounded off in exactly the same terms as is clause (3) of Article 8. But none of them had the equivalent to clause (5).

x) Clauses (1) and (2) approach fundamental rights from the aspect of a law said to be in collision with such rights. Clause (5) on the other hand looks at fundamental rights themselves. Now, it is trite law that fundamental rights inhere in persons Clauses (1) and (2) protect that someone by voiding a specific law that breaches fundamental rights. Clause (5) protects that someone by protecting fundamental rights themselves. The first two clauses are engaged when the assault on fundamental rights is indirect; the fifth when the rights are directly under attack. The denial of or derogation from fundamental rights is indirect in the former case inasmuch as the impugned law seeks to encroach upon an "area" denied the State. It is direct in the latter case because the impugned action would displace or deny the very "area" itself. This leads to the second point. In an important sense clause (5) underpins clauses (1) and (2). If fundamental rights are in a state of suspension (or worse) then clearly the protection afforded by clauses (1) and (2) is, at the very least, put in jeopardy or may even disappear altogether. Clause (5) makes the constitutional position absolutely clear. Unless the Constitution itself expressly so provides (and then only to that extent) there cannot be any temporal or spatial displacement of fundamental rights. Clause (5) requires that at every instant and over every inch of the territory fundamental rights must be, and remain, in existence and in force. This then ensures that at all times and in all places (unless expressly otherwise so provided by the Constitution) clauses (1) and (2) are effectively in force and operation. If these clauses are the guardians and guarantors of fundamental rights, then clause (5) is the guardian and guarantor of the clauses themselves. Quis custodiet ipsos custodes—who will guard the guards themselves, asked the Romans though in quite another sense and context. If we may appropriate the words of the maxim for present purposes and put them to a rather different use, it is clause (5) that guards the guards themselves (clauses (1) and (2)). This brings us to the third point. The role of clause (5) is both situational and positional. It protects fundamental rights, and thus those in whom the rights inhere, by standing sentinel over the whole of the legal landscape. No citizen in whom fundamental rights inhere can be placed in a situation, either actually or potentially, that results in a suspension (or worse) of fundamental rights. This leads to the final point. Clause (5) approaches, and protects, fundamental rights in a collective sense. While it would certainly be engaged even if a single fundamental right is, in effect, placed

in a state of suspension (or worse) contrary to what is permissible, its real substance and power is revealed when one takes a step back and looks at fundamental rights as a whole. The reason is that when the clause is so engaged, it is not necessary to identify a specific fundamental right that is being affected. If it can be shown that the whole panoply of rights is being, or would be, placed, either actually or potentially, in a state of suspension (or worse) that suffices.

xi) The protection afforded by clause (5) is not just when a breach has actually occurred. It is also anticipatory, i.e., it acts to prevent a breach occurring at all in the first place. In an appropriate context, even before the situation has reached the point where the claimant has to show a denial of or derogation from this or that fundamental right, clause (5) is there. That context includes the situation where it can be shown that either the purpose or effect of the impugned action (whether a law or otherwise) would be to displace fundamental rights. In this sense it can even be regarded as preceding clauses (1) and (2).

xii) If a claim is brought that there is a denial of or derogation from fundamental rights that may warrant, on occasion, a two-step consideration. In the first instance the Court may have to consider whether there is a breach of clause (5). If the answer is in the affirmative that may well be decisive and conclusive in and of itself. If the answer is in the negative, then the matter would move to the second step, i.e., to consider whether there is a breach of one or more particular and identified fundamental rights, an answer to which question would then be determinative. Two further points may also be made in this context. Firstly, in the overwhelming number of cases the challenge is brought, considered and decided only in terms of the second step, the first not being engaged or even invoked at all. But, in some cases, the challenge has to be considered in light of both, and the matter could stand determined simply at the first stage. Secondly, and obviously, for there to be at all even the possibility of a two-step analysis in the sense here contemplated, a constitutional provision in the nature of clause (5) must exist. If there is no such provision in the constitutional dispensation, then it would be in the nature of things that the challenge is confined only to one stage, i.e., whether is a breach of this or that specific fundamental right.

xiii) Clause (3)(a) results in the immediate and absolute denial of fundamental rights in their totality. Clause (5) on the other hand, stands absolutely and robustly in denial of such denial (other than as is expressly provided). The former tugs one way, the latter in exactly the opposite direction. How is this tension to be resolved? In relation to the three categories of State employees identified in clause (3)(a), it is clearly this clause that will have to take precedence over clause (5). The reason is obvious. The raison d'être of the clause is to enfold a law enacted for the stated purposes in relation to such State employees.

xiv) No law, whether existing or one minted under the present Constitution, can defeat the protections provided by clause (5). For persons other than the three categories of State employees specified in Article 8(3)(a), and especially in relation to civilians, any and every law claiming to be within the contemplation of the said provision must pass through the sieve of clause (5) and also, if so

required, be tested on the anvil of any violation of a particular and specified fundamental right. In other words, the law must be examined in terms of the two-step analysis set out above. It is only in this way that the provisions that can permissibly be incorporated within the law can be identified, and those impermissibly planted there excised. Any other approach would result in Article 8(3)(a) ceasing to be an "ouster clause" subject to strict interpretation. Thus, the Army Act as an existing law would be subject to the same analysis as already carried out above. For the reasons given, it matters not whether the para (i) provisions were "insertions" or "provisions". Either way, they are ultra vires the present Constitution, with particular reference and regard to clause (5) of Article 8.

xv) Even if in respect of a law within the contemplation of Article 8(3)(a) rights are given which correspond to fundamental rights, that does not and cannot change their nature. They are and remain statutory rights, and because the denial of fundamental rights is total and immediate, subject to the will of the legislature, to grant or withhold as it may please. Indeed, the very "offer" made by the learned Attorney General, that for the specific purpose of trials of persons accused of offences on May 9th and 10th, certain additional rights would be granted underscores their essentially transitory nature. Fundamental rights are, on the other hand, precisely that: fundamental and existing as of constitutional right, engirdled and protected by not just the first two clauses of Article 8 but, in the present constitutional dispensation, also clause (5). To focus only on the operative effect of a right while ignoring its nature and substance is to seriously misread the Constitution and disapply clause (5). This cannot be. No matter how many rights are granted by the Army Act and the 1954 Rules and howsoever many more rights are piled on top of those, their essence cannot be altered. It cannot be that the people of Pakistan are reduced to a point where, in respect of rights which ought to be fundamental, they are instead required to go (as it were) cap in hand to the State, pleading plaintively: "Please Sir, can we have some more?" That is not what fundamental rights mean. That is not what fundamental rights are. That is not what the Constitution means. That is not what the Constitution is.

xvi) It must be clearly understood that the existence of a legislative competence and the (constitutional) ability to exercise it are not necessarily coterminus. Briefly stated, Pakistan is a federal Republic in which legislative competences are divided between the Federation and the Provinces. Some are exclusive to Parliament, others to the Provincial Assemblies and a few are concurrent. Whether a law made by a particular legislature is within its legislative competence is determined by rules of constitutional interpretation that are well settled and established. Their genesis goes back centuries, and is traceable in a direct line to Privy Council judgments in relation to the constitution of Canada, the British North America Act, 1867 (now known as the Constitution Act). If a law is not within the legislative competence of a particular legislature then it is straightaway ultra vires and liable to be declared as such simply for this reason. However, even if a law is found to be within legislative competence, it may yet be

constitutionally impermissible for the legislature to enact it. (Contrariwise, in certain situations the Constitution makes it permissible for a legislature to enact a law that would ordinarily be beyond its competence.) Two examples will suffice. In the case of a concurrent competence, if Parliament has made a law in respect thereof, then the Provincial Assemblies cannot, to the extent that the legislative field is so "occupied", make a law in exercise of their own competence (see Article 143). The existence of the federal law does not denude the Provincial Assemblies of their competence over the concurrent field. Thus, e.g., to the extent that the field remains "unoccupied", they can make their own laws. But, to the extent of the federal law, and as long as it exists, they cannot exercise the competence. The other example is of course in relation to fundamental rights. If a law made by either the Federation or a Province is challenged as being in violation of a fundamental right and as also beyond its legislative competence, then the law, if the second ground succeeds, would be liable to be so declared ultra, without the first having to be considered at all. If it is within competence but in violation of a fundamental right, it would be impermissible for the legislature concerned to make the law. This would not be because the competence does not exist. It does. But it cannot be exercised, the existence of the fundamental right acting as an interdict. If the interdict were, e.g., to be suspended, then the competence can be exercised. Thus (as we will see shortly), when there is a Proclamation of Emergency in the field, certain (but not all) fundamental rights are automatically suspended and the concerned legislature can then make a law in exercise of its legislative competence (see Article 233(1)).

xvii) F.B. Ali was decided within the frame of a constitutional dispensation that did not have any equivalent to Article 8(5). The existence of a legislative competence in terms of the "nexus" theory does not therefore mean that such competence can be exercised in the same manner under the present Constitution as was possible under the 1962 Constitution. Now, the gateway is not just guarded but kept firmly shut, for reasons already set out, by Article 8(5). A law, such as clauses (i) & (ii) of section 2(1) (d) and sub-section 4 of section 59 of Army Act provisions, cannot now be made without passing through the sieve of Article 8(5), and that would be equally true for an existing law or one sought to be made under this Constitution. As noted, when tested on this most demanding of anvils, it would be found wanting. The legislative competence may exist; the security provided to fundamental rights by this provision means that it cannot be exercised. This is certainly the case when the Constitution is operating in its ordinary course, i.e., the "default" mode, when Article 8(5) is in full force and effect.

xviii) The submission that one of the purposes given in Article 8(3)(a), i.e., the ensuring of proper discharge of duties by the Armed Forces, has an "external" aspect that brings third parties and outsiders (i.e., civilians) within its fold cannot, with respect, be accepted. The reason is that this effectively splits Article 8(3)(a) into standalone portions. That is an incorrect approach to this provision. It is one whole, which has to be interpreted and applied holistically. Any other approach

would mean that the provision ceases to be an ouster clause that has to be interpreted and applied strictly.

xix) the correct approach is that the provision applies (as presently relevant) to a law relating to members of the Armed Forces for achieving either (or both) of the stated purposes, to the extent and in the manner that such purpose(s) cannot be achieved without such a law. It is only in this way that the rationale for Article 8(3)(a)—the complete and immediate denial of fundamental rights—is understandable and acceptable. For if, and to the extent that, either of the stated purposes can be achieved even without a law relating to the Armed Forces, that would mean that the law in question would apply also to persons who are not members of such Forces. And in respect of a law such as last mentioned, Article 8(5) would intervene and deny the denial of fundamental rights.

xx) Civilians cannot directly be dragged into the ambit of Article 8(3)(a) by reason of Article 8(5). That result certainly cannot be achieved indirectly by postulating internal and external "aspects" to the stated purposes of the former provision, and thereby expand its scope to include classes of persons other than the three listed categories of State employees. That would be in utter disregard of Article 8(5).

xxi) The fate of the s. 59(4) provision is tied to the former [2(1) (d) of Army Act], since it is in the nature of a subsidiary provision. It has effect and meaning only if the clause (d) [2(1) (d) of Army Act] provision has meaning, and has no independent or standalone purpose or existence. The two stand and fall together. Since the clause (d) provision fails, so must the s. 59(4) provision.

xxii) It will be noted that Article 233(1) of constitution becomes applicable of its own force once a Proclamation is in the field. Of course, as the clause makes clear this is true only for the duration of the Proclamation. As soon as it is revoked, the prohibition at once revives and to that extent the action taken stands repealed. Clause (1) is therefore one instance where it is expressly provided in the Constitution that certain fundamental rights, as specified, may be suspended. To the extent and for the duration that the clause is operative, and within its scope, Article 8(5) therefore ceases to apply.

xxiii) It is to be noted that a Proclamation of Emergency does not, in and of itself, invoke clause (2); a specific Order is required. It can be that a Proclamation is made without an Order under clause (2); the former can exist without the latter but the reverse is not possible. The Order, if made, may be revoked before the Proclamation.

xxiv) Article 8(5) explicitly states that fundamental rights cannot be suspended except as expressly provided in the Constitution. In other words, in respect of the application of this provision, there can be no implication, no matter how "necessary" it may be claimed to be. All that counts, and all that can be taken into consideration, is what the Constitution expressly stipulates. Nothing else can be accepted. It follows from this that while the fundamental rights set out in clause (1) of Article 233 are suspended because the clause expressly so provides, the distinction drawn in terms as above continues to exist, and has always existed, in

relation to clause (2). Even though the right to move a court for the enforcement of fundamental rights may be suspended, the rights themselves are not, and cannot be so regarded. Even if a Proclamation of Emergency is in the field and an Order is made under Article 233(2). Other than the six fundamental rights enumerated in clause (1), the others are not suspended even if such Order is made, because the Constitution does not so provide expressly. There can, in the present context, be no suspension by implication. Furthermore, the fact that some fundamental rights would stand expressly suspended by reason of Article 233(1) is of no moment. Most of the fundamental rights would not be suspended. Clause (5) therefore, would continue to stand athwart the gateway even if an Order is in the field in terms of Article 233(2), and continue to deny the denial of fundamental rights that would result from an application of clause (3)(a).

xxv) Even when the Constitution is operating in the second "mode", i.e., under a Proclamation of Emergency, and even if that Proclamation is "bolstered" by an Order under Article 233(2), clauses (i) & (ii) of section 2(1) (d) and sub-section 4 of section 59 of Army Act would be, and remain, ultra vires the Constitution, on account of the continued protection provided by Article 8(5).

xxvi) At all times prior to the charging of a person (i.e., the civilian) for an offence that falls within either of two sub-clauses of clause (d) of s. 2(1), he is obviously not subject to the Army Act. And so the question: if this is so, then any and all acts done by any authority acting under the Army Act in respect of such person (such as, e.g., seeking to arrest him or obtaining his custody from any other authority, the preparation of a charge sheet, the convening of a court martial, his production before that forum, etc.) would prima facie be unlawful. This is so because then the person would not be subject to the said Act. The Army authorities and any court martial (if one could at all be then convened) would not yet have any jurisdiction. All those acts and proceedings would (and could only) happen within the four corners of the Army Act, which would at that time not be applicable at all.

xxvii) Validating clauses are well known to the law. These clauses are in a sense a special type of deeming clauses. They are enacted when, usually, a Court has given judgment that an act (e.g., the levy of a tax or fee) is unconstitutional or illegal. If at all the defect can be cured, then appropriate legislation is passed, which also has a validating clause making it retrospectively applicable.

xviii) In our view, the answer has to be in the negative. The reason is that it would be contrary to the interpretation of the provision, and the reason for its insertion, as given by the learned Chief Justice. It is only to obviate the objection that could otherwise be taken by an accused that he was not subject to the Army Act when the offence was committed. The narrowness of the applicability is highlighted by the fact that when it was sought to be pressed by the State in respect of the s. 121-A PPC offence, in F.B. Ali the learned Chief Justice was dismissive of the submission. But there is another reason why s. 59(4) cannot be regarded as a validating clause. The rationale on which such a clause is premised is that the law as subsequently enacted could have been in the field at the time the impugned

action was found to be unlawful or unconstitutional, and therefore it could be given retrospective effect to validate what was done. But that can never be true of an offence under the clause (d) provision. A civilian would always not be subject to the Army Act when the offence under either of the two sub-clauses was committed. That, of a necessity, had to come later, when he stood charged. The only way for the two to be combined would be to, in effect, provide that a civilian is always subject to the Army Act, a conclusion that cannot be accepted, and one which was firmly rejected by the Court in F.B. Ali itself. Section 59(4) allowed the Army Act to pull itself up by its own bootstraps but only to a limited extent. In any case, it would be highly inappropriate to so construe it as covering, and thereby legitimizing, acts, things and proceedings done prior to the charging for the offence, which would of a necessity be unlawful when done.

xxix) Civilians could be charged for an offence under either of the two sub-clauses by and before a forum (being a Court of competent jurisdiction) outside of, and externally to, the Army Act. Once so charged, they would then become subject to the Army Act, and all actions and proceedings against them could then be taken within the said statute. To explain the point, we look at each sub-clause of the clause (d) provision separately. Beginning with sub-clause (i) it will be recalled that there are two offences that answer to the description, one under s. 31(d) of the Army Act, and the other s. 131 of the Penal Code. Now, if it is alleged that a civilian has committed an offence under the latter section, then he would be subject to the jurisdiction of a Court of criminal jurisdiction in terms of the ordinary law of the land. He would be investigated, and if a case is made out challaned and be brought before that Court. All of this would of course happen outside of, and without reference to, the Army Act. When so brought before the Court, and on it being satisfied that there was a case to answer, the civilian would then be charged. On such charge the civilian would stand accused of the necessary offence as would, per F.B. Ali, make him subject to the Army Act. Then, action and proceedings could be taken against him in relation thereto, such as his being handed over to the Army authorities, the convening of a court martial and trial before it. As sub-clause (i), so sub-clause (ii). It will be recalled that here the offence has to be one under the Official Secrets Act, 1923 ("1923 Act"). Again, as before, the civilian alleged to have committed an offence that fits the description given in sub-clause (ii) would be dealt with in the manner provided for under the ordinary law of the land. Ultimately, he would be brought before the competent Court having jurisdiction in respect of the 1923 Act, which could then charge him for the offence. All acts done and proceedings taken against the civilian prior to the charge would be lawful. Once so charged the civilian would become subject to the Army Act by reason of the clause (d) provision and then the ensuing acts and proceedings required under that Act could be taken.

Conclusion: i) There are two primary modes in which Constitution operates. First is default mode (peace time) and second is when there is in force proclamation of Emergency. Whereas third mode is when the Federal Government, in lawful

exercise of its powers under Article 245, has called upon the Armed Forces to act in aid of civil power, or the Armed Forces are, under the directions of said Government, defending Pakistan against external aggression or threat of war.

ii) Sub-clause (i) does not identify any statute as such. It only gives a description of the offence. Therefore in principle any statute which creates an offence the ingredients or elements of which match the description could result in the civilian becoming subject to the Army Act.

iii) Firstly, not only must the offence be under the 1923 Act, its ingredients or elements must also fit the description given in the sub-clause. Any other offence, if committed by a civilian, would not make him subject to the Army Act. Secondly, if there is any other statute that creates an offence the ingredients or elements of which match the description, such offence, if committed by a civilian, would not make him subject to the Army Act.

iv) In practice, the principal consequence ensuing from such subjection is that he becomes liable to be tried for the relevant offence by court martial under the Army Act.

v) A necessary implication of F.B. Ali is that courts martial, and the military justice system, are within the scope of the legislative competence of entry No. 1; and that conclusion is in line with Muhammad Yusuf, as revealed by the historical analysis.

vi) Yes, courts martial as presently conceived and understood for historical reasons stand outside the framework of Article 175 and cannot be constitutionally attacked or challenged with reference thereto.

vii) The genesis of Article 8(3)(a) lies in the well-recognized fact that given the peculiar nature of the tasks that must be performed, in particular and especially, by members of the Armed Forces but also by certain other agencies, it is infeasible to allow them, in the context of the performance of their duties, to enjoy the benefit of fundamental rights. But the peculiarities of that service require derogation from what is otherwise their birthright, as a fundamental and constituent aspect of the Constitution.

viii) See under analysis no. viii.

ix) Each of the Constitutions enacted and adopted post-Independence had a provision similar to Article 8(3)(a). But none of them had the equivalent to clause (5).

x) The first two clauses are engaged when the assault on fundamental rights is indirect; the fifth when the rights are directly under attack. If these clauses are the guardians and guarantors of fundamental rights, then clause (5) is the guardian and guarantor of the clauses themselves. The role of clause (5) is both situational and positional. It protects fundamental rights, and thus those in whom the rights inhere, by standing sentinel over the whole of the legal landscape. Clause (5) approaches, and protects, fundamental rights in a collective sense.

xi) The protection afforded by clause (5) is not just when a breach has actually occurred. It is also anticipatory, i.e., it acts to prevent a breach occurring at all in the first place.

xii) See above under analysis no. xii.
xiii) It is clear that clause (3)(a) on the one hand and clause (5) on the other stand not just in contrast but in direct opposition.
xiv) No law, whether existing or one minted under the present Constitution, can defeat the protections provided by clause (5). No matter whether these provisions were "insertions" or "provisions". Either way, they are ultra vires the present Constitution, with particular reference and regard to clause (5) of Article 8.
xv) No matter how many rights are granted by the Army Act and the 1954 Rules and howsoever many more rights are piled on top of those, their essence cannot be altered.
xvi) It must be clearly understood that the existence of a legislative competence and the (constitutional) ability to exercise it are not necessarily coterminus.
xvii) A law, such as clauses (i) & (ii) of section 2(1) (d) and sub-section 4 of section 59 of Army Act provisions, cannot now be made without passing through the sieve of Article 8(5), and that would be equally true for an existing law or one sought to be made under this Constitution.
xviii) The interpretation which effectively splits Article 8(3)(a) into standalone portions is incorrect approach. It is one whole, which has to be interpreted and applied holistically. Any other approach would mean that the provision ceases to be an ouster clause that has to be interpreted and applied strictly.
xix) the correct approach is that the provision applies (as presently relevant) to a law relating to members of the Armed Forces for achieving either (or both) of the stated purposes, to the extent and in the manner that such purpose(s) cannot be achieved without such a law. It is only in this way that the rationale for Article 8(3)(a)—the complete and immediate denial of fundamental rights—is understandable and acceptable.
xx) Civilians cannot directly be dragged into the ambit of Article 8(3)(a) by reason of Article 8(5).
xxi) Section 59(4) of Army Act is in the nature of subsidiary provision and it has no independent or standalone purpose/existence.
xxii) Article 233(1) of constitution becomes applicable of its own force once a Proclamation of emergency is in the field. To the extent and for the duration that the clause is operative, and within its scope, Article 8(5) therefore ceases to apply.
xxiii) It can be that a Proclamation of emergency is made without an Order under clause (2); the former can exist without the latter but the reverse is not possible.
xxiv) Even if a Proclamation of Emergency is in the field and an Order is made under Article 233(2) other than the six fundamental rights enumerated in clause (1), the others are not suspended even if such Order is made, because the Constitution does not so provide expressly.
xxv) On account of the continued protection provided by Article 8(5), even during proclamation of emergency clauses (i) & (ii) of section 2(1) (d) and sub-section 4 of section 59 of Army Act would be ultra vires of Constitution.
xxvi) Arrest of a civilian or seeking his custody etc. by any authority acting under the Army Act prior to charging a person for an offence that falls within either of

two sub-clauses of section 2(1) of Army Act would prima facie be unlawful.

xxvii) These clauses are in a sense a special type of deeming clauses. They are enacted when, usually, a Court has given judgment that an act (e.g., the levy of a tax or fee) is unconstitutional or illegal. If at all the defect can be cured, then appropriate legislation is passed, which also has a validating clause making it retrospectively applicable.

xxviii) Section 59(4) of Army Act cannot be regarded as a validating clause thereby covering the prior (illegal) acts done in relation to the civilian who is charged for an offence before a court martial.

xxix) Civilians could be charged for an offence under either of the two sub-clauses by and before a forum (being a Court of competent jurisdiction) outside of, and externally to, the Army Act. Once so charged, they would then become subject to the Army Act, and all actions and proceedings against them could then be taken within the relevant statute.

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2. **Additional Note**

Supreme Court of Pakistan
Jawwad S.Khawaja etc. v. Federation of Pakistan etc.
Constitution Petition Nos.24, 25, 26, 27 & 28 and 30 of 2023
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/const.p._24_2023_f.pdf

Issues:

i) What is meant by matter of public importance affecting fundamental rights for exercise of power by Supreme Court under Article 184(3) of Constitution?

ii) Whether provisions of Article 184(3) of Constitution are affected by provisions of Article 199 of Constitution and in case of availability of remedy under Article 199, a party cannot directly approach Supreme Court?

iii) What sections 2 and 59(4) of Army Act prescribe?

iv) Whether right to fair trial is available in administrative proceedings?

v) What is the basic ingredient for fair trial in the light of Article 10A of Constitution and whether right to fair trial is imperative for determination of civil rights or a criminal charge?

vi) Whether right to fair trial and due process were recognized before the insertion of Article 10-A of Constitution?

vii) What is ultimate objective of right to fair trial?

viii) Whether right to fair trial is embodied in Pakistan International commitments and requires adherence?

ix) Whether military trial lacks impartiality & independence and concept of fairness?

x) Whether military trial of civilians defies the Constitutional command?

xi) Whether Article 8(3) (a) of Constitution can be applied to persons other than those in service of Army?

xii) Whether military trial of civilians is permissible as DBA case did allow trial of civilians by military courts?
xiii) Whether legislative competence is not enough to make valid law or the law must pass the test of constitutionality for it to be enforceable?
xiv) Whether the establishment of military courts can be upheld on the basis of reasonable classification as provided in the F.B Ali case?
xv) What is procedure for referral of an accused person to a trial before a military court in terms of Section 549 of the Cr.P.C. read with Sections 59(4), 94 and 95 of the Army Act?
xvi) Why concept of past and closed transactions was evolved?
xvii) Whether Federation can rely on military courts on the ground that ordinary courts are neither effective nor efficient?
xviii) Whether fundamental rights can be sacrificed simply because it is deemed expedient?

Analysis: i) This Court has interpreted Article 184(3) of the Constitution in the context of public importance and fundamental rights to mean that both are preconditions to the exercise of power under Article 184(3) of the Constitution which should not be interpreted in a limited sense but in the gamut of Constitutional rights and liberties, such that their protection and breach would raise serious questions of public importance related to the enforcement of fundamental rights and it would not be relevant that the issue arises in an individual's case or in a case pertaining to a class or group of persons. It has also been held that matters of public importance raise questions that are of interest to or affect a large body of people or the entire community and must be such to give rise to questions affecting the legal rights and liabilities of the community, particularly where the infringement of such freedom and liberty is concerned which would become a matter of public importance.
ii) The provisions of Article 184(3) of the Constitution are self-contained and they regulate the jurisdiction of this Court on its own terminology such that it is not controlled by the provisions of Article 199 of the Constitution… there is no bar on the Petitioners to first avail the remedy before the High Court given that the only requirement to determine the maintainability of the Petitions before this Court is to consider whether the questions raised are of public importance and with reference to the enforcement of fundamental rights… if the arguments of the AGP were to be accepted it would be mean that this Court would have to construe Article 184(3) of the Constitution in a narrow sense recognizing that in the first instance a petitioner should avail the remedy before the High Court. It will also negate the established jurisdiction of this Court under Article 184(3) of the Constitution which has wide and vast powers when it comes to questions of public importance with reference to the enforcement of fundamental rights as conferred by the Constitution.
iii) Section 2 thereof prescribes mainly for persons who are subject to the Act. The Act relates to army personnel however Sub-section (d) was added to Section

2 of the Army Act, and added persons who are otherwise not subject to the Army Act, making them subject to the Act. At the same time, Section 59(4) of the Army Act was also added25 to also include persons not otherwise subject to the Army Act making them liable to face military trial for the offences set out in Section 2(d) of the Army Act.

iv) With the incorporation of Article 10A in the Constitution by the Eighteenth Amendment in 2010, the right to fair trial and due process has become a fundamental right for every person not only in judicial proceedings but also in administrative proceedings.

v) The basic ingredients for a fair trial in the light of Article 10A of the Constitution as enumerated by this Court are that there should be an independent, impartial court, a fair and public hearing, right of counsel, right to information of the offence charged for with an opportunity to cross-examine witnesses and an opportunity to produce evidence. It also includes the right to a reasoned judgment and finally the remedy of appeal. For the determination of either civil rights or a criminal charge, the right to a fair trial and due process is imperative and absolutely necessary. By incorporating Article 10A in Part II Chapter I of the Constitution fair trial and due process are indispensable for every person and it cannot be violated, interfered with or breached by any person including the government.

vi) In fact, even before the insertion of Article 10A of the Constitution the right to fair trial and due process were recognized such that the right to one appeal before an independent forum was declared as a necessary right that must be available to a person. Further under Article 4 of the Constitution being the right to be treated in accordance with law, the right of access to justice, the right of fair trial and the right to due process from an independent forum have been recognized as fundamental rights even prior to the insertion of Article 10A of the Constitution.

vii) The ultimate objective is to ensure fairness in the process and proceedings and fairness itself being an evolving concept cannot be confined to any definition or frozen at any moment, with certain fundamentals which operate as constants. The independence of the decision maker and their impartiality is one such constant. A reasoned judgment before a judicial forum is another constant without which the right to fair trial would become meaningless. The right of an independent forum of appeal is another relevant constant which ensures fair trial.

viii) Fair trial standards have global recognition and acceptability as being the minimum requirement for a person facing a trial. These have now become global truths accepted as being fundamental to human dignity and life. The Universal Declaration of Human Rights prescribes in Article 10 that everyone is entitled to fair and public hearing by an independent and impartial tribunal for the determination of rights and obligations and against any criminal charge. The various elements of fair trial under the ICCPR also found in the UDHR include rights such as access to justice, public hearing, right to representation, to be able communicate privately, freely and confidentially with counsel. The right to call witnesses, cross-examine them and to get a reasoned judgment against which the

right of appeal is available are also considered mandatory without which this fundamental guarantee of fair trial, rule of law and due process becomes illusionary. The European Convention on Human Rights (ECHR) also provides that a fair and public hearing in civil and criminal cases by an independent and impartial tribunal is fundamental to the right of fair trial which includes the right to be informed of the charge against him, the right to defence, to legal assistance and to the presumption of innocence in a criminal case. The right to receive a fair trial is also recognized in the First Protocol of the Geneva Convention. So the right to fair trial not only enjoys constitutional safeguards being a fundamental right but it is also embodied in Pakistan's international commitments which must be adhered to.

ix) On examining the Rules, it appears that the presiding officers in a military court are serving members of the military who in terms of Rule 51 of the Rules are not required to give a reasoned judgment rather merely record a finding of "guilty or not guilty" against every charge. There is no independent right of appeal against such a verdict as Section 133 of the Army Act provides that no remedy of appeal shall lie against any decision of a court martial save as provided under the Army Act. Section 133B prescribes for an appeal to the court of appeals consisting of the Chief of Army Staff or one or more officers designated by him or a Judge Advocate who is also a member of the armed forces. Rule 26 permits the suspension of the rules on the grounds of military exigencies or the necessities of discipline which means that where in the opinion of the presiding officer convening a court martial or a senior officer on the spot, that military exigencies or discipline renders it impossible or inexpedient to observe some of the Rules then the operation of the Rules can be suspended which in turn means that any limited rights under the Rules such as Rule 13(5), being the right to cross-examine any witness, or Rule 23(1) being the right of preparation of a defence by the accused which includes the right to free communication with witness or friend or legal advisor can be suspended. These are but some of the more glaring issues that arise within a military trial, from which it is clear that there is a lack of impartiality and independence within a military trial and the concept of fairness and due process is missing from the procedure. The basic principle of the independence of the judiciary is that everyone is entitled to be tried by the ordinary courts or tribunals established under the law and the trial of a citizen by a military court for an offence which can be tried before the courts established under Article 175 of the Constitution offends the principles of independence of the judiciary and of fair trial.

x) The military justice system is a distinct system that applies to members of armed forces to preserve discipline and good order. Hence, they are subjected to a different set of laws, rules and procedures which ensures internal discipline and operational effectiveness. The purpose of a separate military justice system is to allow the armed forces to deal with matters pertaining directly to the discipline, efficiency and morale of the military effectively, swiftly and severely so as to ensure control over military personnel. Military jurisdiction covers members of

the armed forces and includes matters related to their service which ensures the proper discharge of their duties and the maintenance of discipline amongst them. This is precisely why the Constitution brings such matters under the exception to Article 8(1)(2) in the form of Article 8(3)(a) of the Constitution which excludes the operation of fundamental rights when it relates to the members of the armed forces who are charged with the maintenance of public order in the discharge of their duties and the maintenance of discipline amongst them. Military trials of civilians on the other hand totally negates the requirement of an independent and impartial judicial forum, hence, it compromises the right to fair trial. Citizens enjoy the protection of fundamental rights under the Constitution and are assured that they will be treated as per law, such that their life and dignity is protected. At the same time, the Constitution commands the legislature to not make law which takes away any fundamental right protected under the Constitution. In this context, the requirement of the Federal Government to try civilians before military courts totally defies the constitutional command and is in derogation to the rights contained in Articles 4, 9, 10A, 14 read with Article 175 of the Constitution.

xi) Article 8(3)(a) of the Constitution provides that Article 8 shall not apply to any law relating to members of the armed forces or the police or such other forces, which in essence means disciplinary forces, charged with the duty of maintaining public order. The law here is one that relates to ensuring the proper discharge of their duties or maintenance of discipline amongst them. What this means is that laws which relate to members of the armed forces with respect to their discipline and the discharge of their duties shall be exempted from the protection of Article 8(1)(2) of the Constitution, meaning that members of the armed forces when faced with issues related to the discharge of their duties or the maintenance of their discipline cannot seek the protection of fundamental right as given in Chapter II of the Constitution. Importantly, Article 8(3)(a) of the Constitution is applicable when two conditions are met, first it must apply to members of the armed forces and second it must relate to the discharge of their duty and maintenance of their discipline. The AGP argued that the Army Act falls within the purview of Article 8(3)(a) of the Constitution which means that persons who are made subject to the Army Act also fall within the purview of Article 8(3)(a) of the Constitution especially if hey disrupt the discipline or discharge of their duty. A similar argument was first made in the F.B Ali case where a similar provision was interpreted being Article 6(3) of the Constitution of 1962 wherein this Court held that the said Article only applies to laws related to members of the armed forces charged with the maintenance of public order, proper discharge of their duties and the maintenance of discipline amongst them. Then again in the Liaquat Hussain case, this Court held that Article 8(3)(a) of the Constitution applied to laws that related to the discipline and discharge of duty of members of the armed forces and did not have nothing to do with the question as to whether civilians could be tried by military courts. Yet again, in the DBA case the majority view interpreted Article 8(3)(a) of the Constitution to hold that the applicable laws

under Article 8(3)(a) of the Constitution are those limited to matters that deal with the discipline amongst the members of armed forces for the proper discharge of their duties and since the DBA case dealt with a Constitutional Amendment being a matter other than those pertaining to discipline or discharge of duties by members of the armed forces it was necessary to protect the law and its amendments by placing the Army Act as amended in 2015 in the First Schedule to the Constitution. Hence, in terms of the judgments of this Court, this argument has failed to persuade the court that Article 8(3)(a) of the Constitution can apply to persons other than those who are in the service of the armed forces.

xii) Important to note is that this Court allowed and upheld the Constitutional Amendment because its operation was for two years and because there was a clear defined classification of persons and offences triable for the two years by military courts. In the words of Azmat Saeed, J. speaking for the majority, this was a temporary measure and does not contemplate a permanent solution because the sunset clauses were effective for a period of two years. Further that the trial of civilians by a court martial is the exception and not the rule. Hence, in response to the AGP's argument that the DBA case did allow trial of civilians by military courts, it is important to understand that it was a Constitutional Amendment which made such trials possible that to as a temporary measure, to try terrorists accused of offences of waging war against Pakistan. The ability to try civilians in military courts required a constitutional amendment and was not possible through ordinary legislation. Hence, even though at the time Section 2(1)(d) of the Army Act existed, Constitutional Amendment was necessary to ensure that those subjected to military trials pursuant to the Constitutional Amendment cannot invoke any fundamental right especially Article 10A of the Constitution.

xiii) Legislative competence is not enough to make valid law, the law must pass the test of constitutionality for it to be enforceable. Fundamental rights as prescribed in Part II Chapter I of the Constitution are sacred rights which can neither be treated lightly nor in a casual or cursory manner rather while interpreting fundamental rights the court must always keep in mind that no infringement or curtailment of any right can be made unless it is in accordance with the Constitution. These rights can be reasonably restricted, however, they are to be protected by the courts so as to ensure that citizens are protected from arbitrary exercise of power. The Constitution treats fundamental rights as superior to ordinary legislation which is clearly reflected in Article 8(1)(2) and (5) of the Constitution being that fundamental rights exist at a higher pedestal to save their enjoyment from legislation infractions.

xiv) Although, the vires of the impugned sections were previously challenged in the F.B Ali case, the grounds for challenge today are totally different and specifically with reference to the fundamental right to fair trial under Article 10A of the Constitution and the right to an independent judiciary. Where a law has been challenged with reference to it being in derogation to fundamental rights or any constitutional command such a law has to be declared unconstitutional and ultra vires the Constitution. The trial of civilians before military courts was

challenged in the Liaquat Hussain case wherein the vires of the 1998 Ordinance was under challenge on the ground that it is violative of a constitutional provision. The 1998 Ordinance was struck down as this Court concluded that trial of civilians by military courts would be violative of the Constitution because citizens have the right to access to justice through forums envisioned under Article 175 of the Constitution which ensures and guarantees the enforcement of all fundamental rights especially the right to fair trial and due process. In the opinion of one of the Judges to the Liaquat Hussain case, military courts do not fall under any provisions of the Constitution, therefore, trial by military courts of civilians, for civil offences which have no direct nexus with the armed forces or the defence of Pakistan would be ultra vires the Constitution. Thus, the establishment of military courts cannot be upheld on the basis of reasonable classification as provided in the F.B Ali case... The establishment of military courts for such offences amounts to a parallel justice system which is contrary to the judicial system established under the Constitution and the law. The Liaquat Hussain decision focused on the forum established in terms of Article 175 of the Constitution and concluded that any other forum which seeks to try civilians for offences triable in the ordinary courts of the country will be contrary to Article 175 and is unconstitutional because every citizen enjoys the right to access to justice by an independent judiciary as contemplated under Article 175 of the Constitution.

xv) The referral of an accused person to a trial before a military court is in terms of Section 549 of the Cr.P.C. read with Sections 59(4), 94 and 95 of the Army Act. The criminal court having jurisdiction over the matter is obligated to form a reasoned opinion as to whether an accused person is to be tried by a military court because the transfer from the ordinary court to the military court for trial amounts to the loss of the right to fair trial and due process as well as the right to independent forum. This places a heavy burden on the Magistrate under Section 549 Cr.P.C. to protect the rights of the accused before it as the Magistrate must satisfy itself that the accused is subject to the Army Act and can only be tried before a military court. From the documents placed before this Court the denial of a reasoned order by the Magistrate is in fact the start of the process which is in contravention to the law as well as denial of the fundamental right of fair trial and due process for the detained citizens.

xvi) The concept of past and closed transactions was evolved to safeguard accrued and vested rights of parties under a statute which subsequently were found and declared to be ultra vires the Constitution.

xvii) If the ordinary or special courts are unable to meet the challenges of trying the civilians detained in these cases then the solution is to make an effort to strengthen the system. Relying on military courts on the ground that the ordinary courts are neither effective nor efficient reflects poorly on the State and the government whose primary responsibility is to maintain the rule of law and to ensure a strong and effective justice sector for the people. The Federation cannot blame a system it is responsible for and thereafter subject citizens to a system that violates their fundamental rights.

xviii) Fundamental rights cannot be sacrificed simply because it is deemed expedient.

Conclusion: i) Matters of public importance raise questions that are of interest to or affect a large body of people or the entire community and must be such to give rise to questions affecting the legal rights and liabilities of the community, particularly where the infringement of such freedom and liberty is concerned which would become a matter of public importance.

ii) The provisions of Article 184(3) of the Constitution are self-contained and they regulate the jurisdiction of this Court on its own terminology such that it is not controlled by the provisions of Article 199 of the Constitution. There is no bar on the Petitioners to first avail the remedy before the High Court given that the only requirement to determine the maintainability of the Petitions before this Court is to consider whether the questions raised are of public importance and with reference to the enforcement of fundamental rights.

iii) See under analysis no. iii.

iv) The right to fair trial and due process is a fundamental right for every person not only in judicial proceedings but also in administrative proceedings.

v) The basic ingredients for a fair trial in the light of Article 10A of the Constitution as enumerated by this Court are that there should be an independent, impartial court, a fair and public hearing, right of counsel, right to information of the offence charged for with an opportunity to cross-examine witnesses and an opportunity to produce evidence. It also includes the right to a reasoned judgment and finally the remedy of appeal. The right to fair trial is imperative and very necessary for determination of civil rights or a criminal charge.

vi) Right to fair trial and due process were recognized even before the insertion of Article 10-A of Constitution.

vii) The ultimate objective is to ensure fairness in the process and proceedings.

viii) The right to fair trial not only enjoys constitutional safeguards being a fundamental right but it is also embodied in Pakistan's international commitments, which must be adhered to.

ix) There is a lack of impartiality and independence within a military trial and the concept of fairness and due process is missing from the procedure.

x) Trial of civilians before military courts totally defies the constitutional command and is in derogation to the rights contained in Articles 4, 9, 10A, 14 read with Article 175 of the Constitution.

xi) Article 8(3) (a) of Constitution cannot be applied to persons other than those in service of Army.

xii) Military trial of civilians is not permissible because DBA case did allow trial of civilians by military courts.

xiii) Legislative competence is not enough to make valid law, the law must pass the test of constitutionality for it to be enforceable.

xiv) The establishment of military courts cannot be upheld on the basis of reasonable classification as provided in the F.B Ali case.

xv) See above under analysis no. xv.
xvi) The concept of past and closed transactions was evolved to safeguard accrued and vested rights of parties under a statute, which subsequently were found and declared to be ultra vires the Constitution.
xvii) Federation cannot rely on military courts on the ground that ordinary courts are neither effective or efficient.
xviii) Fundamental rights cannot be sacrificed simply because it is deemed expedient.

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3. **Dissenting Note**

Supreme Court of Pakistan
Jawwad S.Khawaja etc. v. Federation of Pakistan etc.
Constitution Petition Nos.24, 25, 26, 27 & 28 and 30 of 2023
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/const.p._24_2023_f.pdf

Issues: i) Whether Supreme Court ought to exercise restraint in positive exercise of its jurisdiction in case High Court has concurrent jurisdiction?
ii) Whether bench of Supreme Court can deviate from earlier view of bench of co-equal strength?
iii) If in a bench consisting of seventeen members, decision is given by majority of eight judges, whether any view contrary to such view ought to be taken by nine judges?

Analysis: i) In *Manzoor Elahi* Case, it was settled that where the High Court u/A 199 of Constitution and Supreme Court u/A 184(3) of Constitution have concurrent jurisdiction, the Supreme Court is to exercise restraint in positive exercise of its jurisdiction, in case any of High Courts has already taken cognizance of the matter under Article 199 of Constitution. *In Benazir Bhutto* Case titled as PLD 1988 SC 416, an exception was made to strict adherence to the practice of Supreme Court on the prolonged delay of over one year and eight months before High court. When no similar subject matter is pending before any of the High Court under Article 199 of Constitution, both the principles set out in Ch. *Manzoor Elahi* case and the exceptions to the general principle provided in Benazir Bhutto case are not attracted and Supreme Court can entertain the lis and proceed with the matter.
ii) It is well settled principle that an earlier judgment of a bench of Supreme Court is binding not only on the Benches of smaller numerical strength but also on the benches of co-equal strength. A bench of Supreme Court cannot deviate from earlier view held be a co-equal bench of Supreme Court. If a contrary view has to be taken, the proper course is to request for the constitution of a larger bench to reconsider the earlier view.

iii) I am of the considered opinion that, though the view expressed by eight Judges, as voiced by Sh. Azmat Saeed J. in his opinion, being not the view of the majority, cannot be treated as the decision of the seventeen-member Bench that heard and decided *District Bar case*, the judicial discipline and propriety demand that, any view contrary to the view of eight Judges should only be taken by a Bench of more than eight Judges. That is why, I have stated above that it would have been more appropriate if this case had been heard and decided by a Bench of nine Judges, as originally constituted.

Conclusion: i) When no similar subject matter is pending before any of the High Court under Article 199 of Constitution, both the principles set out in *Ch. Manzoor Elahi* case and the exceptions to the general principle provided in Benazir Bhutto case are not attracted and Supreme Court can entertain the lis and proceed with the matter.
ii) A bench of Supreme Court cannot deviate from earlier view held be a co-equal bench of Supreme Court. If a contrary view has to be taken, the proper course is to request for the constitution of a larger bench to reconsider the earlier view.
iii) If in a bench consisting of seventeen members, decision is given by majority of eight judges, then any view contrary to such view ought to be taken by nine judges.

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4. **Supreme Court of Pakistan**
Sohail Ahmed v. Mst. Samreena Rasheed Memon and another
Civil Petition No. 488-K of 2023 and 489-K of 2023
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._488_k_2023.pdf

Facts: Through these petitions, filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has challenged the order dated passed by learned Single Judge of High Court whereby two Constitutional petitions filed by him were dismissed.

Issues: i) Whether family courts in Pakistan have jurisdiction to entertain the case when plaintiff/wife is dual citizen of Pakistan and USA at the time of institution of suit and her husband is permanent resident of Pakistan?
ii) Where did the wisdom come from while introducing the amendment in Family Court Act, 1964 by the legislature and how it empower the Family Court?
iii) What is legal obligation of Family Court under sections 10(3) and 10(4)?

Analysis: i) In the present case, although the Respondent is living in the USA at the time of the institution of the suit through her duly constituted attorney. However, the respondent usually comes to Pakistan; have acquired her education in Karachi and visits her family in Karachi from time to time. By this proviso, the rigour of normal rule providing for territorial jurisdiction for trial of cases in Family Court have been relaxed in favour of female filing a suit for dissolution of marriage or recovery of dower. The words "Ordinarily resides" and "shall also have

jurisdiction" used in proviso demonstrate the intention of parliament is to facilitate things for the wife and off-set her handicap. Therefore, the option of instituting such suits vests with the wife and the Court is bound to take her convenience subject to law. Hence, Family Courts in Pakistan have jurisdiction to entertain the matter and the trial court has rightly exercised so.

ii) The Legislature while introducing amendment in the Family Court Act, 1964 has derived wisdom from Quran and Sunnah. Islam confers the right of Khula to woman by virtue of which a Muslim woman can get herself released from the bond of marriage if she feels, due to any reason, that she could not live with her husband within the limits prescribed by Allah Almighty. The right and mode of "Khula" has been described by Almighty Allah in verse No. 229 of Surah Baqra… The proviso to section 10 empowers the Family Courts to pass a preliminary decree for the dissolution of Marriage forthwith upon the failure of reconciliation and further provides that wife shall be ordered to return the Haq Mehr received by her.

iii) Section 10(3) imposes a legal obligation on the Family Courts to make a genuine attempt for reconciliation between the parties. Trial Court shall remain instrumental and make genuine efforts in resolving the dispute between the parties. In case if despite of genuine efforts, reconciliation fails, the Trial Court under proviso of section 10(4), without recording evidence is empowered to pass a decree of dissolution of marriage forthwith. At this juncture if the court observes that the wife without any reason is not willing to live with her husband, then under proviso (ibid) the Court is left with no option, but to dissolve the marriage. Islam does not force on the spouses a life devoid of harmony and happiness and if the parties cannot live together as they should, it permits a separation.

Conclusion: i) When plaintiff/wife is dual citizen of Pakistan and USA at the time of institution of suit the option of instituting such suits vests with the wife and the Family Court is bound to take her convenience subject to law as per words "Ordinarily resides" and "shall also have jurisdiction" used in proviso.

ii) The Legislature while introducing amendment in the Family Court Act, 1964 has derived wisdom from Quran and Sunnah. The proviso to section 10 empowers the Family Courts to pass a preliminary decree for the dissolution of Marriage forthwith upon the failure of reconciliation and to order wife to return the Haq Mehr received by her.

iii) Section 10(3) imposes a legal obligation on the Family Courts to make a genuine attempt for reconciliation between the parties. In case, if despite of genuine efforts, reconciliation fails, the Trial Court under proviso of section 10(4), without recording evidence is empowered to pass a decree of dissolution of marriage forthwith.

5. **Lahore High Court**
Muhammad Sarwar v. The State & another
Criminal Appeal No. 56707 of 2019,
Asad Aslam v. The State & 02 others
Criminal Appeal No. 50403 of 2019,
The State v. Muhammad Sarwar
Murder Reference No. 275 of 2019
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC6917.pdf

Facts: By single judgment, Criminal Appeal filed by appellant against his conviction & sentence, Criminal Appeal filed by complainant against the acquittal of respondent Nos. 2 & 3 and Murder Reference sent by the learned trial Court for confirmation or otherwise of the sentence of Death awarded to appellant were decided.

Issues: i) Whether withholding any witness by prosecution is always fatal to prosecution case?
ii) Whether eye witness is required to give photo picture of the occurrence?

Analysis: i) Prosecution has withheld their evidence and as such, an adverse inference under Article 129(g) of the Qanun-e-Shahadat Order, 1984, may be drawn against the prosecution but it is noteworthy that it is the quality and not the quantity of evidence which weighs with the Courts regarding the decision of a criminal case therefore, non-production of the aforementioned gardeners of the ground in the witness box is not fatal to the prosecution case. (…) it is by now well settled that the people/witnesses not related to the deceased/complainant party do not appear in the witness box to avoid enmity with the accused party and their non-appearance in the witness box is not fatal to the prosecution case.
ii) Under the circumstances, there was every possibility that one out of the two additional fire shots made by the appellant, had hit the deceased but the same could not be noticed by the prosecution eye witnesses due to the falling of the deceased on the ground, as well as, on account of sensation & panic created due to the firing of the appellant. It is by now well settled that an eye witness cannot give the photo picture of each and every injury sustained by the deceased due to the panic & sensation developed at the time of occurrence due to the firing of the accused.

Conclusions: i) An adverse inference within the meaning of Article 129(g) of Qanun-e-Shahadat Order, 1984 can be drawn for non-production of witness, however, it is the quality and not the quantity of evidence which weighs and non-production of witness is not always fatal to the prosecution case
ii) Eye witness cannot give the photo picture of each and every injury sustained by the deceased due to the panic & sensation developed at the time of occurrence due to the firing of the accused.

6. **Lahore High Court**
Haq Nawaz v. The State & another
Criminal Appeal No.64474 of 2022
The State v. Haq Nawaz
Murder Reference No.248 of 2022
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC6967.pdf

Facts: This criminal appeal filed by appellant against his conviction and sentence and murder reference sent by the trial Court for confirmation or otherwise of the death sentence of appellant.

Issues: i) What is the effect of delay in lodging the FIR and conducting the post-mortem examination of the dead body?
ii) What if the best evidence has been withheld by the prosecution?
iii) Whether mere recovery of dead-body from the house of an accused is sufficient to convict and sentence him under the capital charge?
iv) Whether a single circumstance which creates doubt regarding the prosecution case is sufficient to give benefit of doubt to the accused?

Analysis: i) The delay in lodging the FIR and conducting the post-mortem examination on the dead body of the deceased is suggestive of the fact that the occurrence was unseen and the said delays were consumed in procuring the attendance of fake eye witnesses.
ii) The best evidence has been withheld by the prosecution therefore, an adverse inference within the meaning of Article 129(g) of Qanun-e-Shahadat Order, 1984 can validly be drawn against the prosecution that the witnesses produced in the witness box their evidence would have been unfavourable to the prosecution.
iii) It is by now well settled that mere recovery of dead-body from the house of an accused by itself is not sufficient to convict and sentence him under the capital charge in absence of other convincing and reliable corroborative evidence.
iv) It is by now well settled that if there is a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused, whereas, the instant case is replete with number of circumstances which have created serious doubts about the truthfulness of the prosecution story.

Conclusion: i) See above in analysis clause.
ii) An adverse inference within the meaning of Article 129(g) of Qanun-e-Shahadat Order, 1984 can validly be drawn against the prosecution.
iii) Mere recovery of dead-body from the house of an accused is not sufficient to convict and sentence him under the capital charge.
iv) A single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused.

7. **Lahore High Court**
Muhammad Rafique & another v. The State & another.
Criminal Appeal No. 5537 of 2022
The State v. Arshad Ali & another
Murder Reference No. 14 of 2022
Mr. Justice Malik Shahzad Ahmad Khan, Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC6928.pdf

Facts: Criminal Appeal filed by appellants as well as Murder Reference sent by the learned trial Court for confirmation or otherwise of the sentence of death awarded to appellants in private complaint in respect of offences under Sections 302/364/147 and 149 of the Pakistan Penal Code, 1860 are disposed of by this single judgment as both these have arisen out of the same judgment.

Issues: i) What will be the status of the statement of an accused under Section 342 of the Criminal Procedure Code, 1898, depicting a different stance regarding occurrence, when the prosecution evidence is disbelieved by the court?
ii) Whether the amendment brought in Section 311 of the Pakistan Penal Code, 1860, has retrospective effect?

Analysis: i) When the court has disbelieved the prosecution evidence qua ocular account and recovery of murder weapon however the appellant, while making his statement under Section 342 of the Criminal Procedure Code, 1898, has candidly admitted the occurrence with a different stance, then his statement is to be accepted or rejected in toto.
ii) When the occurrence took place prior to the amendment brought in Section 311 of the Pakistan Penal Code, 1860 providing punishment of imprisonment for life for commission of murder in the name or on pretext of honor then said amendment cannot be applied retrospectively.

Conclusion: i) If the prosecution evidence is disbelieved by the court then the statement of an accused recorded under Section 342 of the Criminal Procedure Code, 1898 is to be accepted or rejected in toto.
ii) The amendment brought in Section 311 of the Pakistan Penal Code, 1860, has no retrospective effect.

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8. **Lahore High Court**
Imran Ali v. The State etc.
Criminal Appeal No.68692-J of 2020
Mr. Justice Malik Shahzad Ahmad Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC6950.pdf

Facts: Through this criminal appeal the appellant has assailed his conviction and sentence in case F.I.R. registered, in respect of offences under sections 302/311 PPC.

Issues: i) Whether delay in lodging the FIR and conducting the postmortem examinations

of deceased is suggestive that the time consumed in procuring the attendance of fake eye witnesses in unseen occurrence?
ii) Whether unnatural conduct of the witnesses at the spot of occurrence amounts that their evidence is unworthy of reliance?
iii) Whether delayed recovery of blood stained dagger on the pointation of accused is believable, when he had sufficient time to clean the blood on it?
iv) Whether delay in transmission of blood stained dagger to the forensic science lab is fatal for prosecution?
v) Whether a single circumstance creating reasonable doubt is sufficient to extend benefit to an accused?

Analysis: i) Delay in lodging the FIR and conducting the postmortem examinations on the dead body of the deceased is suggestive of the fact that the occurrence was unseen and the said delay were consumed in procuring the attendance of fake eye witnesses(…)
ii) When the complainant party was comprising of at least 3/4 male adult members. They were also accompanied by other female members and people of the area at the time of occurrence but they did not try to save deceased at the time of occurrence or to apprehend the accused after the occurrence. They allowed the accused to commit the murder of deceased, by inflicting, as many as, 11-injuries on her body. Deceased was real daughter of the complainant and sister-in-law of PW. The accused was not armed with any formidable firearm weapon and he was only armed with a Churri. Then it is evident from the perusal of the evidence of the prosecution eye-witnesses that they stood like silent spectators at the time of occurrence. Had the abovementioned eyewitnesses been present at the spot at the time of occurrence as claimed by them then they could have saved deceased or at least apprehended the accused after the occurrence. Their conduct is unnatural thus their evidence is not worthy of reliance… Under the circumstances, it cannot be safely held that the abovementioned eye witnesses were present at the spot at the relevant time and they had witnessed the occurrence because their conduct is highly unnatural(…)
iii) When the occurrence took place twenty four days before recovery of‘Churri’ on the pointation of the accused from his house and during such period,accused had ample opportunity to wash way the blood on ‘Churri’. In the light of above, recovery of blood stained ‘Churri’ on the pointation of accused is not free from doubt(…)
iv) The blood stained ‘Churri’was sent to the office of Punjab Forensic Science Agency, after one month and thirteen days from the occurrence, therefore, it was unlikely that the blood on ‘Churri’ would not disintegrate during the above mentioned period…The evidence of alleged recovery of ‘Churri’ from accused and positive report of Punjab Forensic Science Agency are of no avail to the prosecution(…)
v) It is by now well settled that if there is a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of

doubt to the accused.

Conclusion: i) Yes, delay in lodging the FIR and conducting the postmortem examinations of deceased is suggestive that the time consumed in procuring the attendance of fake eye witnesses in unseen occurrence.
ii) Yes, unnatural conduct of the witnesses at the spot of occurrence amounts that their evidence is unworthy of reliance.
iii) Delayed recovery of blood stained dagger on the pointation of accused is not believable, when he had sufficient time to clean the blood on it.
iv) Yes, delay in transmission of blood stained dagger to the forensic science lab is fatal for prosecution.
v) Yes, a single circumstance creating reasonable doubt is sufficient to extend benefit to an accused.

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9. **Lahore High Court**
Qasim Ali v. The State
Crl. Appeal No.80274-J of 2022
Mr. Justice Malik Shahzad Ahmad Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC6940.pdf

Facts: Appellant was tried in case F.I.R in respect of offence under section 302 PPC and vide impugned judgment, passed by learned Additional Sessions Judge, he has been convicted and sentenced. Through this Criminal Appeal, appellate assailed his conviction and sentence.

Issues: i) Where the chance witness cannot prove any valid reason of his presence at the place of occurrence at the relevant date and time, whether his very presence at the spot at the relevant time becomes doubtful?
ii) Whether the delay in conducting the postmortem examination on the dead body of the deceased without plausible explanation is suggestive of the fact that the occurrence was unseen and the delay was consumed in procuring the attendance of fake eye witnesses?
iii) Whether the prosecution evidence can be disbelieved on account of its conflict with the medical evidence regarding the number/nature of injuries sustained by the deceased?

Analysis: i) As the abovementioned eye-witnesses are not residents of the village where the occurrence took place hence they are chance witnesses, therefore, their presence at the spot at the relevant time without establishing any convincing reason for their presence at the spot at the relevant time, is not free from doubt. As the above mentioned prosecution eye-witnesses are chance witnesses and they could not prove any valid reason of their presence in the village of occurrence at the relevant date and time, therefore, their very presence at the spot at the relevant time becomes doubtful.
ii) No plausible explanation has been given by the prosecution that as to why the

dead body was brought to the hospital and post mortem examination was conducted with such a delay of about nine hours from the occurrence. The abovementioned delay in conducting the postmortem examination on the dead body of the deceased is suggestive of the fact that the occurrence was unseen and the delay was consumed in procuring the attendance of fake eye witnesses.

iii) It is further noteworthy that there is conflict between the ocular account and medical evidence of the prosecution. In the contents of the FIR, complainant alleged that the appellant gave two brick bat blows which landed on the head and chest of deceased whereas in the post mortem report and pictorial diagrams there is only one injury on the head of the deceased. No injury on the chest of the deceased was noted by the concerned Medical Officer. It is further noteworthy that both the eye witnesses, stated before the learned trial Court that the appellant inflicted one brick bat blow on the head and three/four brick bat blows on the chest and shoulder of deceased. They were duly confronted with their previous statements and improvements made by them in this respect were duly brought on the record. It is therefore, evident that there was conflict between ocular account and medical evidence of the prosecution regarding the number of injuries sustained by deceased, as mentioned in the contents of the FIR and as mentioned by the prosecution eye witnesses before the learned trial Court and as noted in the post mortem report. Moreover, the prosecution witnesses made improvements in their statements while appearing before the learned trial Court regarding the number of injuries sustained by the deceased on his chest and shoulder and their improved statements was also in conflict with the medical evidence, therefore, their evidence is not worthy of reliance.

Conclusion: i) Where the chance witness cannot prove any valid reason of his presence at the place of occurrence at the relevant date and time, his very presence at the spot at the relevant time becomes doubtful.

ii) The delay in conducting the postmortem examination on the dead body of the deceased without plausible explanation is suggestive of the fact that the occurrence was unseen and the delay was consumed in procuring the attendance of fake eye witnesses.

iii) The prosecution evidence can be disbelieved on account of its conflict with the medical evidence regarding the number/nature of injuries sustained by the deceased.

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10. **Lahore High Court**
Rafaqat Ali v The State
Criminal Appeal No. 36587 of 2019
Mr. Justice Malik Shahzad Ahmad Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC6893.pdf

Facts: Criminal Appeal was filed against conviction and sentence passed by learned trial court under sections 302/147/149 of PPC.

Issues: (i) Effect of delay in lodging of FIR?
(ii) Effect of delay in conducting the post mortem?
(iii) Significance of the conduct of the witnesses of ocular account?
(iv) Effect of conflict between ocular account and the medical evidence?
(v) Effect where motive not proved?
(vi) Effect where recovery made on joint disclosure and pointation?
(vii) Whether the determination of guilt or innocence of accused is the exclusive domain of only the courts of law and this sovereign power of courts can never be permitted to be exercised by police?
(viii) Whether same set of evidence which was disbelieved qua involvement of co-accused persons could not be relied upon to convict the accused on a capital charge?
(ix) Statement of an accused recorded under section 342 of Cr.P.C. is to be read in its entirety.

Analysis: (i) Delay in reporting the matter to the police creates doubt regarding the truthfulness of the prosecution story. Hence possibility of deliberations and concoctions in the prosecution story could not be ruled out.
(ii) Delay in conducting the postmortem examination was suggestive of the fact that the prosecution eye witnesses were not present at the spot at the relevant time and the abovementioned delay was consumed in procuring the attendance of fake eye witnesses.
(iii) Where the conduct of the prosecution eye witnesses was highly unnatural it in turn would make their presence at the spot doubtful.
(iv) Material discrepancy between ocular account and medical evidence creates dent in the prosecution story.
(v) Once a motive is set up by the prosecution side but if it is not established then it would adversely affect the case of prosecution by making it doubtful.
(vi) Recovery made on joint disclosure and pointation becomes doubtful in the eye of law.
(vii) Police opinion becomes irrelevant after recording of prosecution evidence by the learned trial Court.
(viii) The prosecution evidence which has been disbelieved against the co-accused cannot be believed against the appellant without independent corroboration.
(ix) It is by now well settled that it is first and foremost duty of the prosecution to prove its case and if the prosecution fails to prove its case then statement of an accused is to be accepted or rejected in toto. It is legally not permissible to accept inculpatory part of the statement of an accused and to reject exculpatory part of the said statement.

Conclusion: (i) Delay in lodging of FIR casts a suspicion on the prosecution story.
(ii) Delay in conducting of postmortem is one of the factors casting doubt on the stance of the prosecution.
(iii) See analysis part (above).

(iv) Contradiction in ocular and medical account creates dent in the prosecution story.
(v) See analysis part (above).
(vi) See analysis part (above).
(vii) See analysis part (above).
(viii) Same set of evidence which was disbelieved qua the involvement of co-accused could not be relied upon to convict the accused on a capital charge.
(ix) It is settled law by now that a statement of an accused recorded under section 342, of Cr.P.C. is to be read in its entirety and is to be accepted or rejected as a whole and reliance should not be placed on that portion of the statement which goes against the accused person.

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11. **Lahore High Court**
Liaqat Ali @ Bao v. The State
Criminal Appeal No. 78954-J of 2019
Arshad Mahmood v. The State & another.
Criminal Revision No. 15587 of 2020
Mr. Justice Malik Shahzad Ahmad Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC6906.pdf

Facts: Criminal Appeal was filed by accused against his conviction and sentence passed under sections 302/427/34 of PPC as well as, Criminal Revision filed by complainant for enhancement of the sentence of the appellant.

Issues: i) What is evidentiary value of a chance witness?
ii) What inference can be drawn from a delayed postmortem?
iii) Whether a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused?

Analysis: i) As mentioned earlier, both the abovementioned eye witnesses were not residents of the village (Nawan Pind), where the occurrence took place rather they were residents of Chak No. 34/Deputywala therefore, they were chance witnesses and as such, they were bound to prove the reasons of their presence at the spot at the relevant time but as observed earlier, they did not mention the reason of their presence at the spot at the time of occurrence in the FIR (Exh.PC/1) or in their statements before the police & even the reason given by them during their cross-examination was not proved through the recovery of any burnt item or through the production of any purchase receipt of the said items. In the light of above, both the abovementioned witnesses are chance witnesses and they could not prove the reason of their presence at the spot at the relevant time therefore, it is not safe to rely upon their evidence for upholding the conviction & sentence of the appellant.
ii) The abovementioned delay in conducting the postmortem examination on the dead body of the deceased is suggestive of the fact that the occurrence was unseen and the said delay was consumed in procuring the attendance of fake eye witnesses.
iii) It is by now well settled that if there is a single circumstance which creates

doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused, whereas, the instant case is replete with number of circumstances which have created serious doubt regarding the truthfulness of the prosecution story.

Conclusions: i) The evidence of chance witness can only be relied upon if he can prove the reason of his presence at the spot at the relevant time otherwise it is not safe to rely upon such evidence.

ii) The inference from delayed postmortem is that time has been consumed in procuring the attendance of fake witnesses.

iii) A single circumstance which creates doubt regarding the prosecution case is sufficient to give benefit of doubt to the accused.

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12. **Lahore High Court**
Shaffat Ibrahim Khan v. Chairman National Accountability Bureau and others
Writ Petition No.58871 of 2022
Mr. Justice Ali Baqar Najafi, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC6990.pdf

Facts: Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner while alleging to be the bona fide purchaser in possession of the property and relying upon the judgment passed by the High Court, has prayed that the restriction placed by the Military Estate Officer/respondent No. 3 over the said property may be declared to be without lawful authority and he be directed to remove the said restriction and provide him with the copy of the GLR after entering name of the petitioner in his record as lawful owner of the said property.

Issue: Whether section 23 of the National Accountability Ordinance, 1999 creates any bar on transfer of the property in dispute during the pendency of the appeal before High Court?

Analysis: It is noteworthy that the proviso to section 23 ibid was inserted in Ordinance pursuant to the direction issued by the Supreme Court of Pakistan in the case of Khan Asfandyar Wali and others Vs. Federation of Pakistan through Cabinet Division, Islamabad and others (PLD 2001 SC 607) wherein, inter alia, vires of the Ordinance were assailed for violation of fundamental rights embodied in Chapter 1 of Part II of the Constitution to reflect that transfer of property by an accused person or any relative or associate of such person or any other person on his behalf or creation of charge on any movable or immoveable property owned by him or in his possession, while inquiry, investigation or proceedings before the Accountability Court was pending, not to be void if made with approval of the Court subject to such terms and conditions as the Court deems fit. The purpose and object behind promulgation of section 23 of the Ordinance has been expounded by the Supreme Court in the case of Khan Asfandyar Wali…

Punishment for the offence of corruption and corrupt practices has been prescribed under Section 10 of the Ordinance not only in custodial terms but includes, amongst others, forfeiture to the appropriate government or the concerned financial institution such assets and pecuniary resources as are found to be disproportionate to the known sources of income or which are acquired by money obtained through corruption and corrupt practices, whether in the name of the holder of the convict or any of his dependents or benamidars. Section 23 ibid, as held by the Supreme Court in the case of Khan Asfandar Yar Wali (Supra), provides for an interlocutory measure to prevent persons accused of corruption and corrupt practices to frustrate the objects of law… Since section 23 of the Ordinance not only restricted the exercise of fundamental rights enshrined in Articles 23 and 24 of the Constitution of the Islamic Republic of Pakistan, 1973 but also prescribed an offence under section 23(b) ibid, therefore, it could only be construed strictly. The word "Court" used in section 23 of the Ordinance has been defined in section 5(g) the Ordinance to mean the Accountability Court. It does not include the High Court. An amendment was made in section 9(b) by insertion of phrase "including High Court" through Ordinance No. IV of 2000 to eclipse authority of the High Court to grant bail in cases under the Ordinance, however, such statutory prohibition could not abridge or takeaway jurisdiction of the High Courts to grant bail under Article 199 of the Constitution to any person accused of an offence under the Ordinance, as held by the Supreme Court of Pakistan in the cases of Khan Asfandyar Wali and others Vs. Federation of Pakistan and others (PLD 2001 SC 607) and Muhammad Iqbal Khan Noori and others v. National Accountability Bureau and others (PLD 2021 SC 916). The distinction between the Court and the High Court, as maintained by the Ordinance, is equally manifest from section 32 which provides the remedy of appeal against final judgment of the Court before the High Court to be heard by a Bench of not less than two judges. It is one of the cardinal principles of interpretation of criminal statutes that such enactments are not to be extended by construction… The proviso inserted in section 23 of the Ordinance which provided a remedy to any person to seek approval of transfer from the Court, entailed inquiry into facts that could not be held in appeal before the High Court. This lent an additional justification for not extending application of Section 23 ibid to the High Court. For the above reasons, we are of the view that after conclusion of the trial resulting in acquittal of an accused, the restriction imposed by law under section 23 comes to an end and provisions of the said section do not extend in their application to the High Court. Be that as it may, upon admission of an appeal against acquittal, High Court is possessed of all powers of the trial Court to pass any incidental order qua freezing of assets under section 12 of the Ordinance read with section 423 of the Code of Criminal Procedure, 1898 which mutatis mutandis applies to the proceedings under the Ordinance as mandated by Section 17(a) of the Ordinance.

Conclusion: There is no bar on transfer of the property in dispute during the pendency of the appeal before High Court under Section 23 of the National Accountability

Ordinance, 1999, however High Court has all powers of the trial Court to pass any incidental order qua freezing of assets under section 12 of the Ordinance read with section 423 of the Code of Criminal Procedure, 1898.

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13. **Lahore High Court**
Nouman Arshad v. The Director General, etc.
Writ Petition No.2977 of 2021
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC6820.pdf

Facts: In the earlier writ petition, direction was given to the respondents to look into the matter and if any such application as claimed is pending, will attend to the same and dispose it of through a speaking order passed on its own merit. The respondent had given undertaking for work of improvement of Sewerage System and the work expected to be completed till 30th December 2020 depending on funds release from Government of the Punjab. Hence, this is second petition on the subject.

Issue: Whether information regarding spending and allocation of Budget is a fundamental right of every citizen?

Analysis: Under Article 19-A of the Constitution of Islamic Republic of Pakistan, 1973, it is fundamental right of every citizen that information regarding spending and allocation of Budget be made public.

Conclusion: It is fundamental right of every citizen that information regarding spending and allocation of Budget be made public.

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14. **Lahore High Court**
Sheikh Akhtar Aziz v. Province of Punjab, etc.
W. P. No.17428 of 2023
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC7029.pdf

Facts: The petitioner filed a suit for specific performance, which was decreed initially but he failed before Apex courts and the Apex Court upheld the direction for returning the earnest amount to the petitioner with profit at Bank rate. In compliance of the direction a cheque of Rs.10,50,000/- was issued, but was fraudulently encashed/withdrawn by the then Civil Nazar, who was dismissed from service and died subsequently. Petitioner is aggrieved of not refunding an amount, which was deposited in compliance of Court's order as remaining consideration.

Issue: What should be the order of the court in an eventuality of embezzlement of an amount deposited by the claimant on court's direction?

Analysis: If embezzled amount was deposited in treasury on court's direction, the same court, on an application by the claimant shall determine, whether the amount is embezzled, not paid to the party so entitled, and that the claimant has no role, direct or indirect in the fraud. In presence of these findings, the court shall itself direct the Provincial Government for payment of the amount to the entitled person, within given time. The embezzled amount, if recovered thereafter, shall obviously go to the State Treasury.

Conclusion: The court in an eventuality of embezzlement of an amount deposited by the claimant on court' direction shall itself direct the Provincial Government for payment of the amount to the entitled person, within given time. The embezzled amount, if recovered thereafter, shall obviously go to the State Treasury.

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15. **Lahore High Court**
National Transmission & Despatch Company Ltd. v. The Commissioner Inland Revenue & another
ITR No.72345 of 2023
Mr. Justice Shahid Karim, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC6773.pdf

Facts: The Commissioner Inland Revenue (Appeals) decided the appeal against the applicant which was affirmed by the Appellate Tribunal Inland Revenue. The Appellate Tribunal by its two separate orders which are under challenge in these reference applications dismissed the appeal filed by applicant while allowing the appeal of the Department (in the other case) and based its decision on similar premises.

Issues: i) Whether the aggregate of a person's turnover can be treated as the income of the person for the year chargeable to tax?
ii) Whether Court can take notice of the documents filed during the hearing of any case?
iii) Whether grant of transmission license is distinct and separate from the issuance of a distribution license?

Analysis: i) The crucial aspect is regarding applicability of minimum tax under Section 113 of the Ordinance. For the purpose, the aggregate of a person's turnover as defined in section 113 has to be treated as the income of the person for the year chargeable to tax. The definition of turnover peculiar to section 113 has been set out above. In order to attract minimum tax on the basis of turnover the gross receipts derived from the sale of goods has to be taken into consideration. NTDC contends that it does not derive any gross receipts from sale of goods (electricity in this case) and merely acts as the agent for procurement of electricity on behalf of DISCOs. To resolve the issue engaged in these reference applications, the entire structure of regulation of electricity has to be kept in view which is the centrepiece of the system of procurement and sale of electricity put in place. Hunch or personal apprehension of an officer of income tax department is not

enough. In our opinion, NTDC is a special purpose vehicle incorporated for a specific purpose and regarding which a license has been granted to it by NEPRA. It must be borne in mind that NTDC is in possession of a transmission license and its powers are hedged in by the terms of that license… Thus, the transmission business has been defined as the business of transmission of electric power and for the purpose to plan, develop, construct and maintain NTDC's transmission system and operation of such system for the transmission and dispatch of electric power. That is the whole purpose of NTDC and NTDC is not expected to travel beyond that purpose and to engage in the sale and purchase of electricity… The license is granted to NTDC to engage in the transmission business within the territory as set in the Schedule 1 to the license. Article 2 further provides that licensee /NTDC shall comply with and adhere to the rules, regulations and directions of NEPRA from time to time. The periphery of the powers of NTDC has been laid down in Article 2 which does not mention any activity relating to sale or purchase of electricity and is merely confined to the transmission business within the territory delineated in Schedule 1. Article 5 further provides the exclusivity regarding the activities in the territory specified in Schedule 1 in respect of the licensee… Article 7 mentions a competitive market operation date (CMOD) which is June 5, 2015 as stated above. Prior to that the Central Power Purchasing Agency (CPPA) of the licensee was to be established under Article 8 of the License to purchase or procure electric power to meet the demand of eight-ex-WAPDA distribution companies on behalf of those distribution companies and the terms were also given in Article 7. The entire structure under which (CPPA) was to procure electric power on behalf of DISCOs to meet their demands through contracts with generation licensees was spelt out in Article 7. It also states in clause (2) that competitive market operation date was initially set as July 1, 2009 which was revised to a later date since the infrastructure or market was not adequately developed to support a competitive arrangement by July 1, 2009. Articles 7 and 8 read cumulatively obliged NTDC to establish a central power purchasing agency (CPPA) for the procurement of power on behalf of DISCOs and other related matters primarily relating to reorganization for the maintenance of transmission system and reliable operation, control, switching and dispatch of transmission system and generation facilities and provision of balancing services. NTDC submits that the functions of procurement of electric power on behalf of DISCOs as well as maintenance of transmission system were being undertaken jointly by NTDC and later on as explicated the business of procurement of electric power was carved out of NTDC and CPPA-G was established which now carries on the business of procurement of electric power exclusively. As adumbrated, the initial onus lay on the department to establish that NTDC was actually engaged in the business of selling of electric power and thereby gross receipts were accumulated which were derived from the sale of goods (electric power in this case). In our opinion the department has failed to establish any such activity to have been undertaken by NTDC. Seeking footing in the terms of the license which have been brought forth above and which leave it in no manner of

doubt that the cardinal feature of the business of NTDC is circumscribed by the terms of the license which by Article 2 clearly states that it can only engage in the transmission business. If the allegations made in the show cause notices are taken as true then it must be established as a fact in the first instance that NTDC is in breach of its license granted by NEPRA. It is nobody's case that NEPRA has taken any action against NTDC for falling in breach of the terms of the license and, therefore, it can be presumed that NTDC is only engaged in undertaking the transmission business in accordance with the terms of the license.

ii) These documents can be looked at by this Court while deciding these reference applications, firstly because they are undisputed and secondly they are public documents and this Court can take notice of these documents in any case.

iii) Therefore, it is clear that the grant of transmission license is distinct and separate from the issuance of a distribution license and distribution company in whose favour the license has been issued has the exclusive right to provide distribution services and to make sales of electric power to the consumers.

Conclusion: i) The aggregate of a person's turnover as defined in section 113 can be treated as the income of the person for the year chargeable to tax.

ii) The Court can take notice of the documents filed during the hearing of any case when documents are public documents and undisputed.

iii) The grant of transmission license is distinct and separate from the issuance of a distribution license.

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16. **Lahore High Court**
Syeda Farzana Batool etc. v. Iltaf Hussain Shah etc.
W.P. No. 2154 of 2022
Mr. Justice MirzaViqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC6836.pdf

Facts: This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 assails the *vires* of order of the Member (Judicial) Board of Revenue, passed to the effect of dismissing the revision petition of petitioners.

Issue: Whether a constitutional petition, without availing alternate remedy of review under Section 8 of the Punjab Board of Revenue Act, 1957, is maintainable against order passed by Member (Judicial) Board of Revenue, Punjab dismissing a revision petition filed under the Punjab Land Revenue Act, 1967?

Analysis: Section 8 of the Punjab Board of Revenue Act, 1957 specifically bestows power of review upon the Board of Revenue. In case of availability of alternate remedy, if the circumstances so demand and the exercise of constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is inevitable, then High Court can invoke such jurisdiction. However, it is also a principle of law that where any party opts to choose a statutory remedy against an order, then such party cannot abandon or bypass said remedy without any valid or

reasonable cause for filing a constitution petition challenging such order.

Conclusion: A constitutional petition, without availing alternate remedy of review under Section 8 of the Punjab Board of Revenue Act, 1957, is not maintainable against order passed by Member (Judicial) Board of Revenue, Punjab dismissing a revision petition filed under the Punjab Land Revenue Act, 1967.

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17. **Lahore High Court**
Waheed Mehmood v. Election Commission of Pakistan etc.
W.P.No.4099 of 2023
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC6842.pdf

Facts: The common questions of fact and law involved in all the petitions governed by this single judgment are that on publication of draft proposal, prepared by committee constituted by the Election Commission for the delimitation of the territorial constituencies in question for upcoming elections to the National Assembly and the Provincial Assembly of the Province, the petitioners, being the residents and voter members of the constituencies, filed their objections to the Election Commission which were discarded by way of order hence these petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

Issue: Whether mere inconvenience of a segment of people can be made basis for the delimitation of the constituencies?

Analysis: Section 17 in Chapter-III of the Elections Act, 2017 mandates the Election Commission to delimit territorial constituencies for elections to the National Assembly, each Provincial Assembly and to the local governments in accordance with the provisions of the Constitution, the Act ibid, the Rules and the applicable local government law. Section 19 of the Act ibid specifies the manner of delimitation of constituencies, whereas section 20 of the Act ibid lays down the principles of delimitation. Further, rule 10 in Chapter-III of the Election Rules, 2017 prescribes a detailed mechanism for preparation of draft proposals for delimitation of constituencies. However, before finalizing the delimitation process, the Election Commission has to ensure that every genuine objection be attended and dealt with properly. The suitability and proximity of an area, being part of a constituency is to be determined on the basis of various factors.

Conclusion: Mere inconvenience of a segment of people cannot be made basis for delimitation of the constituencies.

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18. **Lahore High Court**
Muhammad Amin v. Muhammad Asif Askari, etc.
F.A.O.No.21 of 2020
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC6862.pdf

Facts: This appeal under section 24 of the Cantonments Rent Restriction Act, 1963 arised out of order, whereby the Rent Controller, Wah Cantonment proceeded to allow the ejectment petition filed by the respondents seeking eviction of the appellant from shop.

Issues: i) What are the requirements to prove the ground of personal need under Section 17 of the Cantonments Rent Restriction Act, 1963?
ii) Is it necessary to establish and prove all these grounds of eviction where a landlord takes multiple grounds for the tenant's eviction?

Analysis: i) Section 17 of the "Act, 1963" lays down the grounds for eviction of a tenant from the rented premises. Personal bonafide need is one of the recognized grounds for eviction. (…) It is an oft repeated principle of law that whenever a landlord pleads that the "rented premises" are required to him for his personal need bonafidely, assertion on oath by the landlord that he requires the property in good faith for his personal use shall be sufficient to accept his bonafides if such assertions are consistent and in conformity with the averments of the ejectment petition. Such statement cannot be discarded in vacuum. Even otherwise, it is always the landlord, who is vested with the prerogative to exercise his choice for the "rented premises" and if he needs it bonafidely for his personal use, his claim cannot be rejected outrightly.
ii) It is also well entrenched principle that if landlord canvasses multiple grounds for the eviction of the tenant it is not necessary for him to establish and prove all these grounds. If the landlord is able to prove one of the grounds asserted in the ejectment petition, the tenant can be evicted by the Rent Tribunal.

Conclusions: i) Under Cantonments Rent Restriction Act, 1963, mere assertion on oath by the landlord that he requires the property in good faith for his personal use shall be sufficient to accept his bonafides if such assertions are consistent and in conformity with the averments of the ejectment petition.
ii) If landlord canvasses multiple grounds for the eviction of the tenant it is not necessary for him to establish and prove all these grounds. If the landlord is able to prove one of the grounds asserted in the ejectment petition, the tenant can be evicted by the Rent Tribunal.

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19. **Lahore High Court**
Sabira Bibi, etc. v. Mst. Safurajan, etc.
Writ Petition No. 1475 of 2023
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC6830.pdf

Facts: This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 assails the vires of order whereby the learned Additional District Judge, while dismissing the revision petition filed by the petitioners, affirmed the order passed by the learned Civil Judge Class-I for dismissal of the application for

summoning of the Superintendent, Abandoned Babies & Destitute Children Home, as court witness and application under section 12 (2) of the Code of Civil Procedure (V of 1908).

Issue: Whether it is mandatory for the court to decide miscellaneous application before finalizing the lis and passing the final order/judgment?

Analysis: It is an oft-repeated principle of law that whenever some miscellaneous application is pending before the Court, it shall decide the same in the first stance before finalizing the lis and passing the final order/judgment. Failure to decide the miscellaneous application before passing the final verdict would render the same nullity in the eye of law.

Conclusion: It is mandatory for the court to decide miscellaneous application before finalizing the lis and passing the final order/judgment.

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20. **Lahore High Court**
Pakistan Railways and others v. Misri Khan & Company
Civil Revision No.661-D of 2017
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC6823.pdf

Facts: This petition under Section 115 of the Code of Civil Procedure (V of 1908) arises out of judgment and decree, whereby the learned Additional District Judge, while dismissing the appeal preferred by the petitioners affirmed the judgment and decree passed by the learned Civil Judge.

Issues: i) Which provision of the Limitation Act, 1908 would apply to the suit for the claim relating to the price of work done and suit for compensation for the breach of any contract?
ii) Whether time consumed before the Federal Ombudsman can be excluded from being counted towards the limitation for instituting the suit under Section 14 of the limitation Act, 1908?
iii) When the High Court exercises its revisional jurisdiction to interfere in the concurrent findings of the Courts below?

Analysis: i) From the bare reading of the above referred provisions of law it is manifestly clear that for the claim relating to the price of work done, suit is to be governed by Article 56 of the "Act, 1908" whereas Article 115 of the Act ibid caters the suit for compensation for the breech of any contract, express or implied, not in writing registered and not therein specially provided for in the Act (…) while dealing with the issue relating to the recovery of balance amount and the security it was held by this Court that in the circumstances Article 115 of the "Act, 1908" would come into play being the residuary article.
ii) It clearly manifests from the bare reading of the above referred provision of law that a plaintiff can only claim exclusion of the time from being counted qua limitation if he has been prosecuting with due diligence another civil proceedings

either in a court of first instance or in a court of appeal against the defendant. The proceedings before the Federal Ombudsman cannot be termed as civil proceedings at all, so Section 14 of the "Act, 1908" would not come to the rescue of the respondent.

iii) There are though concurrent findings of facts recorded by both the courts blow but such findings are clearly the outcome of gross misreading and non-reading of evidence. The scope of revisional jurisdiction is hedged in Section 115 of "C.P.C." and though ordinarily concurrent findings of facts are not disturbed but such findings are neither sacrosanct nor it is an inflexible rule that despite observing material flaws, the revisional court will abdicate to exercise its jurisdiction. The judgments passed by the courts below are not based on proper appraisal of evidence and the learned Civil Judge, while decreeing the suit of the respondent has grossly misread the evidence as already noted hereinabove. The appellate court in the circumstances, while upholding the judgment and decree of trial court thus committed a material irregularity. This Court under Section 115 of "C.P.C." is thus obliged and fully competent to correct such error in exercise of its revisional jurisdiction. Needless to observe that when once it is established on the record that concurrent findings are fraught with legal infirmities, it becomes the bounden duty of court exercising revisional powers to curb and stifle such illegalities and material irregularities.

Conclusions: i) The claim relating to the price of work done, a suit is to be governed by Article 56 of the Limitation Act, 1908, whereas Article 115 of the Limitation Act caters the suit for compensation for the breach of any contract.

ii) The proceedings before the Federal Ombudsman cannot be termed as civil proceedings at all therefore time consumed before such forum cannot be excluded from being counted towards the limitation for instituting the suit under Section 14 of the limitation Act, 1908.

iii) When once it is established on the record that concurrent findings are fraught with legal infirmities, it becomes the bounden duty of court exercising revisional powers to curb and stifle such illegalities and material irregularities.

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21. **Lahore High Court**
Bilqees Begum v. District Police Officer and others
Writ Petition No. 9075/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC 7034.pdf

Facts: The Petitioner sought recovery of her mentally disordered brother, from the alleged illegal custody of Respondents No.3 to 8.

Issues: (i) Whether High Court can impose special/exemplary costs over and above the amount stipulated in section 35A CPC?
(ii) Whether High Court can impose costs in a *habeas corpus* petition?

Analysis: (i) Sections 35 and 35A of the Code of Civil Procedure, 1908 ("CPC"),

respectively, provide for the imposition of costs and compensatory costs in respect of false or vexatious claims or defences. Part E, Chapter 11-E of Volume I of the Lahore High Court Rules and Orders supplement these provisions. The courts dealing with civil suits are bound by the provisions of the Code of Civil Procedure and must award costs in accordance with them. These provisions circumscribe their discretion. However, while exercising Constitutional jurisdiction, the High Court may invoke its inherent powers to impose special/exemplary costs over and above the amount stipulated in section 35A CPC.

(ii) There is a misconception that the courts cannot impose costs in criminal matters. Section 491(2) Cr.P.C. empowers the High Court to frame rules to regulate the procedure in *habeas corpus* petitions. Volume V, Chapter 4, Part F of the Lahore High Court Rules & Orders contains the rules framed in the exercise of that power. Rule 16 stipulates that to check the tendency to file vexatious *habeas corpus* petitions, the court may, at its discretion, require the party concerned to deposit in advance an amount as fixed by the court directing the issuance of rule *nisi* to be paid to the detenus as compensation if the petition is found to be frivolous or vexatious. Rule 17 provides that in disposing of such rule *nisi* the court may, at its discretion, make an order for the payment by one side or the other of the costs of the rule. The courts use these provisions quite frequently.

Conclusion: (i) High Court can impose special/exemplary costs over and above the amount stipulated in section 35A CPC.

(ii) High Court can impose costs in a *habeas corpus* petition.

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22. **Lahore High Court**
Ch. Umer Aftab Dhillu and another v. Election Commission of Pakistan and others
Writ Petition No.287 of 2024
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1.pdf

Facts: The Petitioners called in question an order passed by the Election Commission of Pakistan (ECP), whereby it declared Pakistan Tehreek-e-Insaaf(PTI) ineligible to obtain the Election Symbol by invoking section 215 of the Elections Act, 2017 (the Act).

Issues: (i) Whether a High Court can assume jurisdiction in a matter already pending before the Supreme Court of Pakistan?

(ii) Whether an order of the ECP under section 215(5) of the Elections Act 2017, can be assailed without seeking declaration of the same being ultra vires the Constitution?

Analysis: (i) The main claim of the Petitioners in the instant writ petition is that a level playing field has been denied to the political party of the Petitioners by depriving it for its symbol "BAT" under the cover of intra party election thereby

discriminating against all other political parties who were not so denied their respective symbols despite the fact that the other parties followed less onerous processes of holding intra party election in accordance with their respective Constitutions. Importantly, the senior party members already went to the Supreme Court of Pakistan in Constitutional Petition No.47/2023 titled *"Gohar Ali Khan versus Federation of Pakistan etc."* and the Supreme Court vide its order dated 22.12.2023 directed the *"ECP"* to ensure equal opportunity for candidates of all political parties to participate in the election process. The Supreme Court further observed that the importance of free and fair elections, and maintaining a level playing field during elections, cannot be overstated. However, despite clear direction of the Supreme Court of Pakistan the said level playing field has been denied to the Petitioners' political party by way of subsequent denial of the allocation of symbol of "BAT". This particular claim of the Petitioners regarding denial of level playing field in different forms has already been agitated before the Supreme Court of Pakistan in the shape of a contempt petition in reference to the above referred Constitutional Petition No.47/2023 titled "Gohar Ali Khan versus Federation of Pakistan etc." regarding which the Supreme Court has already taken cognizance and matter is pending adjudication there….Therefore, any adjudication on this matter in the given circumstances would tantamount to interference in an issue which is pending adjudication before the Supreme Court of Pakistan besides the possibility of conflicting judgments on the same subject.

(ii) It is well settled that the fundamental rights of freedom of association under Article 17 of the *"Constitution"* is subject to reasonable restrictions imposed by law… the relief claimed by the Petitioners cannot be granted without declaring the said provision of the *"Act"*[i.e. Section 215(5)] ultra vires Article 17 of the *"Constitution"*. Even otherwise, it is a well settled principle of law that when vires of law is challenged, interim relief cannot be granted.

Conclusion: (i) A High Court cannot assume jurisdiction in a matter already pending before the Supreme Court of Pakistan.

(ii) An order of the ECP under section 215(5) of the Elections Act 2017, cannot be assailed without seeking declaration of the same being ultra vires the Constitution.

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23. **Lahore High Court**
Bakhtiar Mahmud Kasuri v. Election Commission of Pakistan, etc.
Writ Petition No. 68931 of 2022 etc.
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC6998.pdf

Facts: In this writ petition along with other writ petitions as common questions of facts and law are involved and same are decided through consolidated order. In all the afore-referred petitions, question of delimitation of two constituencies of National Assembly and Provincial assemblies of a District is involved.

Issues: i) When some apparent discrepancies are found in delimitation of constituencies,

whether same can be summarily resolved in constitutional jurisdiction?
ii) Whether before passing order for modification of constituencies notice in terms of section 22(2) of Election Act, 2017 is necessary?
iii) What is the criterion of delimitation of constituencies in terms of Section 20 of the Election Act, 2017.

Analysis: i) The question whether the said constituencies have been actually modified or corrigendum was issued only by correcting the errors that had earlier crept in the said order is not clear by bare perusal of the areas mentioned in the constituencies, earlier finalized by Form-7 and modified by the corrigendum issued thereafter, however, discrepancies are apparent from the details of areas mentioned in both lists and corresponding maps, which maps and list issued on 05.08.2022 according to representative of E.C.P. were not proper depiction of what has actually been decided by E.C.P. in its order dated 19.07.2022. The said discrepancies cannot be summarily resolved without deeper appreciation of disputed facts and resolution of actual controversies pointed out by the parties which even otherwise cannot be done in constitutional jurisdiction of this Court.
ii) Moreover, it is observed that before passing order for modification of constituencies notice in terms of Section 22(2) of the Act has not been issued to the parties which had contested the matter before E.C.P. which resulted in passing of order dated 19.07.2022, hence, the parties in whose favour the said order was passed have apparently been condemned unheard.
iii) …however, it is observed that in view of Section 20 of the Act delimitation of constituencies has to be made with regard to the distribution of population in geographically compact areas, physical features, existing boundaries of administrative units, facility of communication and public convenience and other cognate factors to ensure homogeneity in creation of constituencies.

Conclusion: i) The said discrepancies cannot be summarily resolved without deeper appreciation of disputed facts and resolution of actual controversies, even otherwise cannot be done in constitutional jurisdiction of this Court.
ii) Notice in terms of Section 22(2) of the Act should be issued to the parties which had contested the matter before E.C.P., before passing order for modification of constituencies.
iii) In view of Section 20 of the Act delimitation of constituencies has to be made with regard to the distribution of population in geographically compact areas, physical features, existing boundaries of administrative units, facility of communication and public convenience and other cognate factors to ensure homogeneity in creation of constituencies.

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24. **Lahore High Court**
Mst. Zumarad Siddique etc. v. Province of Punjab through its Chief Secretary, Govt. of Punjab & others.
W.P. No.229002/2018
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC7040.pdf

Facts: The Constitutional petitions were filed to challenge the validity and imposition of Capital Value Tax ('CVT'), enforced through section 6 of the Punjab Finance Act 2012 (Act, 2012) and demanded at the time of registration of instruments of lease of immovable properties falling within the limits of Cantonment. Moreover the petitions questioned the demand raised for payment of deficient stamp duty(ies) on the instruments of lease of immovable property.

Issues: (i) Validity and imposition of Capital Value Tax ('CVT'), enforced through section 6 of the Punjab Finance Act 2012 (Act, 2012) and demanded at the time of registration of instruments of lease of immovable properties viz a viz the question whether transactions, contained in the instruments of lease and rights created thereunder, are taxable under section 6 of the Act, 2012?
(ii) Ascertainment of the character of the instrument for the purposes of determining the quantum of stamp duty viz a viz the question whether lease in perpetuity is liable to be charged for stamp duty under Article 35 of Stamp Act 1899?

Analysis: (i) Section 6(3) of the Act 2012 imposes tax on the capital value of the immovable property transacted by means of any of the modes specified therein i.e covering instruments of lease. Those who claimed right to use of immovable property, for the period covered under the provision of law, by virtue of instruments of lease, squarely fall within the net of the levy. It is an absurdity to absolve / exempt lessee(s), who had acquired a right to use the property, from payment of levy merely because no recorded value of the property was declared in the instruments or in absence of alleged declaration of recorded value.
(ii) The Court observed that instrument of lease could not be construed as document by which property was transferred. Further opined that instruments of lease, including lease(s) in perpetuity, are identified in Schedule 1 and acknowledged as distinctive class of instrument(s), covered under Article 35 and when an instrument fell within a specific class of instruments, which are though separately identified in the Schedule I, then unless there was anything contrary thereto, resort to the section 6 of Act, 1899 could not be made. The Court went on to observe that instrument of lease was covered under Article 35 of Schedule-I to the Act, 1899. However for conclusive determination as to the examination of the terms of instruments of lease, including the question that whether any of the instruments of lease manifest an attribute of transfer of conveyance or not, and determination of the quantum of stamp duty payable on each of said Instrument, the matter was referred to Chief Revenue Authority i.e. Senior Member Board of

Revenue, who possess the jurisdiction and power to examine and express opinion qua the Instrument, in terms of Section 56 of Act, 1899.

Conclusion: (i) Instruments of lease, coming within the ambit of clause 3 of section 6 of Act, 2012, are subject to CVT levy and there is no instance of invalidity of such levy. (ii) The instrument of lease could not be construed as document by which property was transferred and instrument of lease was covered under Article 35 of Schedule-I to the Act, 1899.

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25. **Lahore High Court**
The State v. Irshad Saeed
Murder Reference No. 35 of 2022
Irshad Saeed v. The State and another
Criminal Appeal No. 597 of 2022
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2023LHC7059.pdf

Facts: Through this criminal appeal the appellate has assailed his conviction and sentence. The learned trial court submitted Murder Reference seeking confirmation or otherwise of the sentence of death awarded to the appellant.

Issues: i) Whether a chance witness is under a bounden duty to provide a convincing reason for his presence at the place of occurrence, at the time of occurrence and is also under a duty to prove his presence by producing some physical proof of the same?
ii) Whether the non-production of vehicle used by the prosecution witnesses to arrive at the place of occurrence and the failure of prosecution witnesses as well as the Investigating Officer of the case to produce the same before the learned trial court leads to the conclusion that no such vehicle was available at place of occurrence?
iii) Whether the failure of the prosecution witnesses to make consistent statements has repercussions, proving that the prosecution witnesses were not present at the place of occurrence, at the time of the occurrence and had not witnessed the same?
iv) Whether corroboration of the prosecution evidence can be had from contrived, manufactured and a compromised oral complaint of complainant?
v) Whether a recovery can be used as incriminating evidence, being evidence that was obtained through illegal means?
vi) Where the ocular account has been disbelieved, whether the evidence of recovery would have any consequence?
vii) Whether the fact of abscondence of an accused can be read in isolation?
viii) Whether medical evidence by its nature and character, can recognize a culprit in case of an unobserved occurrence?

Analysis: i) In this manner, both the prosecution witnesses) can be validly termed as "chance witnesses" and therefore were under a bounden duty to provide a

convincing reason for their presence at the place of occurrence, at the time of occurrence and were also under a duty to prove their presence by producing some physical proof of the same. We have noted with grave concern that the prosecution witnesses failed miserably to provide any consistent evidence as to the reason for their arrival at the place of occurrence and their presence at the place of occurrence when the same was taking place.

ii) The non-production of the motorcycles used by the prosecution witnesses to arrive at the place of occurrence and the failure of prosecution witnesses as well as the Investigating Officer of the case to produce the same before the learned trial court leads to only one conclusion and that being that no such motorcycles were available. Had motorcycles been used by the prosecution witnesses to arrive at the place of occurrence, then the same must have been available at the place of occurrence, at the time of arrival of the Investigating Officer of the case and the same would necessarily have been taken into possession by the Investigating Officer of the case but they were admittedly not and it proves that a false claim was made by the prosecution witnesses that they had arrived at the place of occurrence on their motorcycles. In this manner, the prosecution witnesses failed miserably to prove that they had indeed arrived at the place of occurrence, at the time when the same was happening.

iii) In this manner, the dead body had been brought to the hospital and the post mortem examination of the dead body had already been conducted even prior to the recording of the oral statement of complainant. It establishes the fact that the deceased was brought to the hospital by someone else and not by the prosecution witnesses as claimed by them, albeit unsuccessfully. In this manner we have arrived at an irresistible conclusion that both prosecution witnesses were not present at the place of occurrence and did not even know how the dead body had arrived at the hospital much before the recording of the oral statement of complainant. The contradictions in the statements of the prosecution witnesses with regard to various facets of the prosecution case are obvious. The failure of the prosecution witnesses to make consistent statements has repercussions, proving that the prosecution witnesses were not present at the place of occurrence, at the time of the occurrence and had not witnessed the same.

iv) The prosecution witnesses themselves admitted that the oral statement of complainant and the formal F.I.R were prepared after probe, consultation, planning, investigation and discussion. The scrutiny of the statements of the prosecution witnesses reveals that the oral statement of complainant was neither prompt nor spontaneous nor natural, rather was a contrived, manufactured and a compromised document. No corroboration of the prosecution evidence can be had from the said oral statement of complainant.

v) The learned Deputy Prosecutor General and the learned counsels for the complainant, have submitted that the recoveries of the Motorcycle and the pistol offered sufficient corroboration of the statements of the eye-witnesses. Regarding the recoveries of the Motorcycle and the pistol from the appellant, the same cannot be relied upon as the Investigating Officer of the case, did not join any

witness of the locality during the recoveries of the said Motorcycle and the pistol from the appellant which was in clear violation of section 103 Code of Criminal Procedure, 1898….. Therefore, the evidence of the recoveries of the Motorcycle and the pistol from the appellant cannot be used as incriminating evidence against the appellant, being evidence that was obtained through illegal means and hence hit by the exclusionary rule of evidence.

vi) Even otherwise, as we have disbelieved the ocular account in this case, hence, the evidence of recoveries of the Motorcycle and the pistol would have no consequence. It is an admitted rule of appreciation of evidence that recovery is only a corroborative piece of evidence and if the ocular account is found to be unreliable, then the recovery has no evidentiary value.

vii) The learned Deputy Prosecutor General and the learned counsels for the complainant have also laid much premium on the abscondence of the appellant namely Irshad Saeed as proof of his guilt. The fact of abscondence of an accused can be used as a corroborative piece of evidence, which cannot be read in isolation but it has to be read along with the substantive piece of evidence.

viii) The only other piece of evidence left to be considered by us is the medical evidence with regard to the injuries observed on the dead body of the deceased by doctor but the same is of no assistance in this case as medical evidence by its nature and character, cannot recognize a culprit in case of an unobserved occurrence.

Conclusion: i) A chance witness is under a bounden duty to provide a convincing reason for his presence at the place of occurrence, at the time of occurrence and is also under a duty to prove his presence by producing some physical proof of the same.

ii) The non-production of vehicle used by the prosecution witnesses to arrive at the place of occurrence and the failure of prosecution witnesses as well as the Investigating Officer of the case to produce the same before the learned trial court leads to the conclusion that no such vehicle was available at place of occurrence.

iii) The failure of the prosecution witnesses to make consistent statements has repercussions, proving that the prosecution witnesses were not present at the place of occurrence, at the time of the occurrence and had not witnessed the same.

iv) Corroboration of the prosecution evidence cannot be had from contrived, manufactured and a compromised oral complaint of complainant.

v) A recovery cannot be used as incriminating evidence, being evidence that was obtained through illegal means.

vi) Where the ocular account has been disbelieved, the evidence of recovery would have no consequence.

vii) The fact of abscondence of an accused cannot be read in isolation but it has to be read along with the substantive piece of evidence.

viii) Medical evidence by its nature and character, cannot recognize a culprit in case of an unobserved occurrence.

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26. **Lahore High Court**
The State Vs. Kashif Nouman alias Kashi
Murder Reference No.33 of 2021
Kashif Nouman alias Kashi v. The State
Criminal Appeal No. 526-J of 2021
Mst. Nuzhat Rasheed v. The State
Criminal Appeal No. 527-J of 2021
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC7390.pdf

Facts: Two Criminal Appeals were filed by accused persons against their conviction and sentence passed under sections 302/34 of PPC as well as Murder Reference submitted by the learned trial court under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to one of the appellants.

Issues: i) What are the parameters to prove the case in case of circumstantial evidence?
ii) Whether joint extrajudicial confession is relevant and an admissible piece of evidence?
iii) Whether any value can be attached to delayed recorded statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898?
iv) What is the effect of withholding the best evidence?
v) What needs to be established by the prosecution for the application of Article 40 of the Qanun-e-Shahadat Order, 1984?
vi) What is evidentiary value of the recovery made in violation of section 103 CrPC?
vii) Whether the production of the Call Data Record without the disclosure of the details of the conversation is relevant?
viii) Whether independent evidence is required by the prosecution to prove the alleged motive?
ix) Whether in criminal justice system, onus to prove shifts upon the accused?
x) Whether an accused person can be convicted merely because of not explaining the circumstances in which the deceased had lost his life?
xi) Where all the other pieces of evidence relied upon by the prosecution have been disbelieved and discarded, whether the conviction can be upheld based on medical evidence alone?
xii) What is the standard of proof required in a case completely based upon circumstantial evidence and involves capital sentence?
xiii) Whether a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused?
xiv) What inference can be drawn from the unexplained delay in reporting the matter to police?

Analysis: i) In dealing with circumstantial evidence, the rules specially applicable to such evidence must be borne in mind. In such cases, there is always the danger that

conjecture or suspicion may take the place of legal proof (…) Thus, in a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance by way of reliable and clinching evidence, and the circumstances so proved must form a complete chain of events, on the basis of which no conclusion other than one of guilt of the accused can be reached. Undoubtedly, suspicion, however grave it may be, can never be treated as a substitute for proof.

ii) No reliance whatsoever can be placed upon the alleged joint extra judicial confession of the appellants , allegedly made before the prosecution witnesses namely Nasir Iqbal (PW-3) and Javed Iqbal (PW-4), as the same was a joint extrajudicial confession which is neither a relevant nor an admissible piece of evidence.

iii) It is trite that the delayed recording of the statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898 reduces its value to nothing unless there is a plausible explanation for such delay. No explanation, much less plausible, has been given by the prosecution witnesses namely Ahsan Zafar (PW-5) and Muhammad Shahbaz (PW-6) for not getting their statements under section 161 of the Code of Criminal Procedure, 1898 recorded immediately and therefore no value can be attached to his statement.

iv) Article 129 of the Qanun-e-Shahadat, 1984 provides that if any evidence available with the parties is not produced, then it shall be presumed that had that evidence been produced the same would have been gone against the party producing the same. Illustration (g) of the said Article 129 of the Qanun-e-Shahadat Order, 1984 reads as under:-"(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it."The failure of the prosecution to produce, the children of the deceased , who were admittedly the residents of the place of occurrence and the most natural witnesses, before the learned trial court, has convinced us that had they been produced before the learned trial court they would not have supported the prosecution case.

v) A perusal of above article 40 of the Qanun-e-Shahadat Order, 1984 reveals firstly that it serves as a proviso to Articles 38 and 39 of the Qanun-e- Shahadat Order, 1984. It comes into operation only if and when certain facts are deposed to as discovered in consequences of information received from an accused person in police custody. Thus, in order to apply Article 40 of the Qanun-e-Shahadat Order, 1984, the prosecution must establish that information given by the accused led to the discovery of some fact deposed by him and the discovery must be of some fact which the police had not previously learnt from any other source.

vi) Regarding the recovery of the Pillow (P-3) from the appellant namely Kashif Noman alias Kashi, the same cannot be relied upon as the Investigating Officer of the case, did not join any witness of the locality during the recovery of the Pillow (P-3) from the appellant namely Kashif Noman alias Kashi which was in clear violation of section 103 Code of Criminal Procedure, 1898. The provisions of section 103 Code of Criminal Procedure, 1898, unfortunately, are honoured more

in disuse than compliance. To appreciate it better, this section is being reproduced:-"103.--(1) Before making a search under this chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them so to do."Therefore, the evidence of the recovery of the Pillow (P-3) from the appellant namely Kashif Noman alias Kashi cannot be used as incriminating evidence against the appellant, being evidence that was obtained through illegal means and hence hit by the exclusionary rule of evidence.

vii) Admittedly no voice record or its transcript has been brought on record. It is stressed that in the absence of any voice call data or record, simply the production of the Call Data Record without the disclosure of the details of the conversations is not relevant to prove any fact supporting the prosecution case against the appellants.

viii) The prosecution witnesses failed to provide evidence enabling us to determine the truthfulness of the motive alleged, and the fact that the said motive was so compelling that it could have led the appellant to have committed the Qatl-i-Amd of the deceased. There is a poignant hush with regard to the particulars of the motive alleged. No independent witness was produced by the prosecution to prove the motive as alleged. Even otherwise a tainted piece of evidence cannot corroborate another tainted piece of evidence.

ix) The law on the burden of proof, as provided in Article 117 of the Qanun-e-Shahadat, 1984, mandates the prosecution to prove, and that too, beyond any doubt, the guilt of the accused for the commission of the crime for which he is charged. The said provision provides:"117. Burden of proof:- (1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."On a conceptual plain, Article 117 of the Qanun-e-Shahadat, 1984 enshrines the foundational principle of our criminal justice system, whereby the accused is presumed to be innocent unless proved otherwise. Accordingly, the burden is placed on the prosecution to prove beyond doubt the guilt of the accused, which burden can never be shifted to the accused, unless the legislature by express terms commands otherwise. It is only when the prosecution is able to discharge the burden of proof by establishing the elements of the offence, which are sufficient to bring home the guilt of the accused then, the burden is shifted upon the accused, inter alia, under Article 122 of the Qanun-e-Shahadat, 1984, to produce evidence of facts, which are especially in his exclusive knowledge, and practically impossible for the prosecution to prove, to avoid conviction. Article 122 of Qanun-e- Shahadat,1984 reads as under:"122. Burden of proving fact especially within knowledge:- When any fact is especially within the knowledge of any person, the burden to proving that fact is upon him."It has to be kept in mind that Article 122 of the Qanun-e-Shahadat, 1984 comes into play only when the prosecution has proved the guilt of the accused by

producing sufficient evidence, except the facts referred in Article 122 Qanun-e-Shahadat, 1984, leading to the inescapable conclusion that the offence was committed by the accused. Then, the burden is on the accused not to prove his innocence, but only to produce evidence enough to create doubts in the prosecution's case.

x) An accused person cannot be convicted merely because she did not explain the circumstances in which the deceased had lost his life.

xi) As all the other pieces of evidence relied upon by the prosecution, in this case, have been disbelieved and discarded by us, therefore, the appellants' conviction cannot be upheld on the basis of medical evidence alone.

xii) To carry a conviction on a capital charge it is essential that the courts should deeply scrutinize the circumstantial evidence because fabricating of such evidence is not uncommon and a very minute and narrow examination of the same is necessary to secure the ends of justice. It is imperative for the prosecution to provide all links in the chain, where one end of the same touches the dead body and the other the neck of the accused. The present case is of such a nature that many links are missing in the chain. It would not be wrong to observe that in this particular case, it can be said that there is no link, what to talk about a chain.

xiii) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather, if only a single circumstance creating reasonable doubt in the mind of a prudent person is available, then such benefit is to be extended to an accused not as a matter of concession but as of right.

xiv) It has not been explained at all that why the matter of confession of the appellants was not reported immediately. The delay with which the application (Exh.PC) was submitted by Nasir Iqbal to Zafar Hussain, SI (PW-10) on 07.12.2019 is proof of the fact that the delay was used to fashion out and concoct a false narrative against the appellants.

Conclusions: i) In a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance by way of reliable and clinching evidence, and the circumstances so proved must form a complete chain of events, based on which no conclusion other than one of guilt of the accused can be reached.

ii) Joint extrajudicial confession is neither relevant nor an admissible piece of evidence.

iii) The delayed recording of the statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898 reduces its value to nothing unless there is a plausible explanation for such delay.

iv) Under Article 129 (g) of the Qanun-e-Shahadat Order, 1984, an adverse inference can be drawn against the prosecution that the withheld evidence would not have favoured the prosecution case had it been produced in evidence.

v) Article 40 of the Qanun-e-Shahadat Order, 1984 comes into operation only if and when certain facts are deposed to as discovered in consequences of information received from an accused person in police custody.

vi) The recovery made in violation of section 103 CrPC cannot be used as incriminating evidence, being evidence that was obtained through illegal means and hence hit by the exclusionary rule of evidence.
vii) The production of the Call Data Record without the disclosure of the details of the conversations is not relevant to proving any fact.
viii) The prosecution is required to prove the alleged motive through independent evidence.
ix) In criminal justice system, the burden is placed on the prosecution to prove beyond doubt the guilt of the accused which burden can never be shifted to the accused, unless the legislature by express terms commands otherwise.
x) An accused person cannot be convicted merely because of not explaining the circumstances in which the deceased had lost his life.
xi) Where all the other pieces of evidence relied upon by the prosecution have been disbelieved and discarded, the conviction cannot be upheld based on medical evidence alone.
xii) To carry a conviction on a capital charge it is essential that the courts should deeply scrutinize the circumstantial evidence. It is imperative for the prosecution to provide all links in chain, where one end of the same touches the dead body and the other, the neck of the accused.
xiii) A single circumstance which creates doubt regarding the prosecution case is sufficient to give benefit of doubt to the accused.
xiv) See above in analysis portion.

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27. **Lahore High Court**
The State v. Muhammad Nadeem
Murder Reference No.28 of 2019
Muhammad Zahid alias Billa and another v. The State and another
Criminal Appeal No.151of 2019
Zia Ahmed v. The State and another
Criminal Revision No. 148 of 019
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC7307.pdf

Facts: Feeling aggrieved of the judgment of the learned trial court, the convicts have lodged the Criminal Appeal assailing convictions and sentences awarded to them, while the learned trial court has submitted Murder Reference under section 374 Cr.P.C., seeking confirmation or otherwise of the death sentence awarded to one of the convicts and the complainant has filed Criminal Revision seeking the enhancement of the sentences awarded to the other convict, which Criminal Appeal, Murder Reference and Criminal Revision are intended to be decided through this single judgment.

Issues: i) What is legal status of evidence in shape of a test identification parade?
ii) What would be value of the evidence of prosecution witnesses if they introduce improvements to their previous statements?

iii) What would be status of recovery of crime weapons having been affected without associating any witness of locality?
iv) If all the other pieces of evidence relied upon by the prosecution are disbelieved and discarded, whether the conviction can be based on medical evidence alone?

Analysis: i) The term 'identification' means proving that a person before the Court is the very same that he is alleged, charged or reputed to be. Facts which establish the identity of any person, whose identity is relevant, are always relevant by virtue of Article 22 of the Qanun-e-Shahadat Order, 1984. In order to have some assurance of truth, a test identification is held in the manner that the witness at investigation stage is confronted with the alleged offender, not standing alone but mixed with a number of innocent persons of the same age-group, build and features. Before the Court can accept other evidence to establish the identity of the accused, there must be corroborative evidence acceptable by court in shape of test identification parade.
ii) By way of introducing dishonest, blatant and substantial improvements to their previous statements, the prosecution witnesses impeach their own credit as per Article 151of the Qanun-e-Shahadat Order, 1984.
iii) Recovery of the crime weapons without associating any witness of locality would be in clear violation of Section 103 Code of Criminal Procedure, 1898 and same cannot be relied.
iv) Medical evidence, by its nature and character, cannot recognize a culprit in case of an un-witnessed incidence.

Conclusion: i) A test identification parade is designed to furnish evidence to corroborate the evidence, which the witness concerned tenders before the court.
ii) If the prosecution witnesses introduce improvements to their previous statements and are duly confronted with their former statements, their credit stands impeached and they cannot be relied upon.
iii) Recovery of crime weapon without associating any witness of locality cannot be used as incriminating evidence against the accused as it is the evidence having been obtained through illegal means being hit by the exclusionary rule of evidence.
iv) If all the other pieces of evidence relied upon by the prosecution are disbelieved and discarded, the conviction cannot be based on medical evidence alone.

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28. **Lahore High Court**
The State v. Moula Bakhsh,
Murder Reference No.31 of 2020
Moula Bakhsh v. The State and another.
Criminal Appeal No. 438 of 2020
Muhammad Ramzan v. The State and four others
Petition for Special Leave to Appeal No.54 of 2020.
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC7348.pdf

Facts: Convict was tried alongwith acquitted co-accused of the convict by the learned Additional Sessions Judge, in the case instituted upon the private complaint relating to F.I.R. in respect of offences under sections 302 ,324, 337 F(i),337 F(v), 337 A(i), 337 L(2), 148 and 149 P.P.C. for committing the Qatl-i- Amd. The learned trial court vide judgment convicted and sentenced him. Feeling aggrieved, convict lodged the Criminal appeal, assailing his conviction and sentence. The learned trial court submitted Murder Reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant. The complainant of the case filed Petition for Special Leave to Appeal seeking permission to file an appeal against the acquittal of the co-accused of the convict.

Issues: i) Whether injuries of P.W are indication of his presence at the spot and are affirmative proof of his credibility and truth?
ii) What is the effect of dishonest improvements of witnesses of ocular account?
iii) What is the effect of delay in sending the blood stained weapon of offence for analysis?
iv) What is the evidentiary value of recovery if the ocular account is found unreliable?
v) Whether motive could alone be made basis for conviction, when ocular account is found to be unreliable?
vi) Whether onus to prove the facts in issue never shifts and always lies on the prosecution?
vii) Whether, the statement of accused under section 342, Cr.P.C. must be read in its entirety?
viii) Whether benefit of doubt arising out of a single circumstance can be extended to accused?
ix) What is the principle of the criminal administration of justice of double presumption of innocence of accused?

Analysis: i) The stamp of injuries on the person of a witness may be proof of his presence at the place of occurrence, at the time of occurrence, however the same can never guarantee a truthful deposition. Injuries received by a witness during an incident do not warrant acceptance of his evidence without scrutiny. At the most, such traumas can be taken as an indication of his presence on the spot, but still, his evidence is to be scrutinized on the benchmark of principles laid down for the

appraisal of evidence. It is not to be assumed that a witness who suffered injuries during the occurrence will depose nothing but the truth. Even otherwise, it is not the simple presence of a witness at the crime scene but his credibility, which makes him a reliable witness. It has been held by the august Supreme Court of Pakistan repeatedly that the facts that an injured witness narrates are not to be implicitly accepted rather, they are to be attested and appraised on the principles applied for the appreciation of evidence of any prosecution witness regardless of him being injured or not.

ii) Once the Court comes to the conclusion that the eye witnesses had made dishonest improvements in their statements then it is not safe to place reliance on their statements. It is also settled by this Court that whenever a witness made dishonest improvement in his version in order to bring his case in line with the medical evidence or in order to strengthen the prosecution case then his testimony is not worthy of credence. (…) It is well established by now that when a witness improves his statement and the moment it is observed that the said improvement was made dishonestly to strengthen the prosecution, such portion of his statement is to be discarded out of consideration.

iii) It was scientifically impossible to detect the origin of the blood after about two years of the occurrence because human blood disintegrates in a period of about three weeks.

iv) It is an admitted rule of appreciation of evidence that recovery is only a supporttive piece of evidence and if the ocular account is found to be unreliable then the recovery has no evidentiary value.

v) Moreover, it is an admitted rule of appreciation of evidence that motive is only supportive piece of evidence and if the ocular account is found to be unreliable then motive alone cannot be made basis of conviction. Even otherwise a tainted piece of evidence cannot corroborate another tainted piece of evidence.

vi) Suffice is to observe that the onus to prove the facts in issue never shifts and always lies on the prosecution. That the law is quite settled by now that if the prosecution fails to prove its case against an accused person then the accused person is to be acquitted even if he had taken a plea and had thereby admitted killing the deceased. (…)

vii) The law is equally settled that the statement of an accused person recorded under section 342, Cr.P.C. is to be accepted or rejected in its entirety and where the prosecution's evidence is found to be reliable and the exculpatory part of the accused person's statement is established to be false and is to be excluded from consideration then the inculpatory part of the accused person's statement may be read in support of the evidence of the prosecution.

viii) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather, if only a single circumstance creating reasonable doubt in the mind of a prudent person is available, then such benefit is to be extended to an accused not as a matter of concession but as of right.

ix) It is important to note that according to the established principle of the

criminal administration of justice once an acquittal is recorded in favour of accused facing criminal charge he enjoys double presumption of innocence, therefore, the courts competent to interfere in the acquittal order should be slow in converting the same into conviction, unless and until the said order is patently illegal, shocking, based on misreading and non- reading of the record or perverse.

Conclusions: i) Presence of injuries does not stamp a witness to be a truthful one.
ii) When a witness improves his statement and the moment it is observed that the said improvement was made dishonestly to strengthen the prosecution case, such portion of his statement is to be discarded.
iii) Sending weapon of offence (Hatchet) to the office of Punjab Forensic Science Agency with delay is not helpful to prosecution because it was scientifically impossible to detect the origin of the blood after such a long period as human blood disintegrates in a period of about three weeks.
iv) Recovery is only a supportive piece of evidence and if the ocular account is found to be unreliable then the recovery has no evidentiary value.
v) Motive is only supportive piece of evidence and if the ocular account is found to be unreliable then motive alone cannot be made basis of conviction.
vi) If the prosecution fails to prove its case against an accused person then the accused person is to be acquitted even if he had admitted the occurrence.
vii) Statement of an accused person recorded under section 342, Cr.P.C. is to be accepted or rejected in its entirety.
viii) For giving the benefit of the doubt it is not necessary that there should be so many circumstances rather, if only a single circumstance creating reasonable doubt in the mind of a prudent person is available, then such benefit is to be extended to an accused not as a matter of concession but as of right.
ix) According to the established principle of double presumption of innocence the courts should be slow in converting the acquittal into conviction.

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29. **Lahore High Court**
Murder Reference No.22 of 2019
The State v Ejaz Ahmed
Criminal Appeal No. 788-J of 2019
Ejaz Ahmed v The State
Criminal Appeal No.588 of 2019
Abdul Razzaq v Muhammad Khan and seven others
Mr.Justice Sadiq Mahmud Khurram, Mr.Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC7446.pdf

Facts: The appellant through this appeal has assailed the decision of trial court wherein, he was awarded the sentence of death on two counts under section 302(b) P.P.C, and his other co accused were acquitted.

Issues: i) What are the duties of chance witnesses?
ii) How the courts can presume the existence of any fact?

iii) What is the evidentiary presumption of Article 129 of The Qanun-e-Shahadat Order 1984?
iv) What is the purpose of trial?
v) What is the purpose of causing delay in post mortem examination?
vi) What is the admitted rule of appreciation of evidence of recovery?
vii) Whether the motive is a corroborative piece of evidence?
viii) Whether motive is a double edge weapon?
ix) Whether the abscondence of accused can be used as a corroborative piece of evidence?
x) Whether corroborative and ocular evidence are to be read in isolation?
xi) What is the value of conviction based on the abscondence of accused?
xii) What is the legal value of medical evidence?
xiii) What is the settled principle of criminal law regarding benefit of doubt to the accused?
xiv) What is the established principle of criminal law regarding acquittal of accused?

Analysis: i) The chance witnesses are under a bounden duty to provide a convincing reason for their presence at the place of occurrence, at the time of occurrence and were also under a duty to prove their presence by producing some physical proof of the same.

ii) Article 129 of the Qanun-e-Shahadat Order, 1984 allows the courts to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case.

iii) Article 129 of the Qanun-e-Shahadat, 1984 provides that if any evidence available with the parties is not produced then it shall be presumed that had that evidence been produced the same would have been gone against the party producing the same.

iv) The purpose of the trial is the discovery of truth. As long as men keep lying the only causality would be the reality.

v) A delay in the post mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.

vi) It is an admitted rule of appreciation of evidence that recovery is only a supporting piece of evidence and if the ocular account is found to be unreliable, then the recovery has no evidentiary value.

vii) It is an admitted rule of appreciation of evidence that motive is only a corroborative piece of evidence and if the ocular account is found to be unreliable then motive alone cannot be made basis of conviction. Even otherwise a tainted piece of evidence cannot corroborate another tainted piece of evidence.

viii) It is settled law that motive is a double-edge weapon, which can cut either way; if it was the reason for the accused to murder the deceased; it equally was a ground for the complainant to falsely implicate accused in the case.

ix) The fact of abscondence of an accused can be used as a corroborative piece of evidence, which cannot be read in isolation but it has to be read along with the substantive piece of evidence. Abscondance is only a suspicious circumstance. Abscondance itself has no value in the absence of any other evidence. The abscondence of the accused can never remedy the defects in the prosecution case. Abscondence per se is not sufficient to prove the guilt but can be taken as a corroborative piece of evidence.

x) Both corroborative and ocular evidence are to be read together and not in isolation.

xi) Conviction on abscondence alone cannot be sustained and no conviction can be based on abscondence alone.

xii) The medical evidence is only confirmatory or of supporting nature and is never held to be corroboratory evidence, to identify the culprit.

xiii) It is a settled principle of law that for giving benefit of the doubt it is not necessary that there should be so many circumstances rather, if only a single circumstance creating reasonable doubt in the mind of a prudent person is available, then the such benefit is to be extended to an accused not as a matter of concession but as of right.

xiv) It is an established principle of the criminal administration of justice, once an acquittal is recorded in favour of accused facing criminal charge he enjoys double presumption of innocence, therefore, the courts competent to interfere in the acquittal order should be slow in converting the same into conviction, unless and until the said order is patently illegal, shocking, based on misreading and non-reading of the record or perverse.

Conclusion:

i) The chance witnesses are under a bounden duty to provide a convincing reason for their presence at the place of occurrence and at the time of occurrence.

ii) Article 129 of the Qanun-e-Shahadat Order, 1984 allows the courts to presume the existence of any fact.

iii) When Article 129 of the Qanun-e-Shahadat, 1984 provides that if any evidence available with the parties is not produced, the same would have been gone against the party producing the same.

iv) The purpose of the trial is the discovery of truth.

v) The sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.

vi) It is an admitted rule of appreciation of evidence that recovery is only a supporting piece of evidence.

vii) It is an admitted rule of appreciation of evidence that motive is only a corroborative piece of evidence.

viii) It is settled law that motive is a double-edge weapon.

ix) The fact of abscondence of an accused can be used as a corroborative piece of evidence, which cannot be read in isolation.

x) Both corroborative and ocular evidence are to be read together and not in isolation.

xi) Conviction on abscondence alone cannot be sustained.
xii) The medical evidence is only confirmatory or of supporting nature.
xiii) It is settled criminal law that that for giving benefit of the doubt to the accused, it is not necessary that there should be so many circumstances, if single circumstance creates reasonable doubt then its benefit be extended to accused.
xiv) It is an established principle of the criminal administration of justice, once an acquittal is recorded in favour of accused facing criminal charge he enjoys double presumption of innocence.

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30. **Lahore High Court**
The State v. Ghulam Shabbir etc.
Murder Reference No .51 of 2019 etc.
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC7122.pdf

Facts: The appellants have assailed their conviction for offences u/s 302 etc. of PPC through jail whereas complainant of the case filed criminal appeal against acquittal of other accused by trial court. The trial court submitted murder reference u/s 374 Cr.P.C seeking confirmation or otherwise of the sentences of death awarded to appellants.

Issue: i) How the prosecution ought to establish the case in case of circumstantial evidence?
ii) Whether suspicion can be treated as a substitute of proof?
iii) What is effect of non-production of available evidence by a party?
iv) What is effect of improvement of previous statement of prosecution witness?
v) What is effect of delayed recording of statement u/s 161 Cr.PC?
vi) What is effect of non-mentioning the make or the colour or the registration number or the model number of the motorcycle allegedly used for taking dead body of deceased to burial place?
vii) What is evidentiary value of recovery of weapons of offence if same are not sent for forensic analysis?
viii) Whether only production of Call Data Record without any voice call data record prove any fact supporting prosecution case?
ix) Whether a tainted piece of evidence can corroborate any other piece of evidence which is also tainted?
x) Whether it is necessary that there should be so many circumstances creating doubt to extend benefit of same to accused?

Analysis: i) In a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance by way of reliable and clinching evidence, and the circumstances so proved must form a complete chain of events, on the basis of which no conclusion other than one of guilt of the accused can be reached.
ii) Undoubtedly, suspicion, however grave it may be, can never be treated as a

substitute for proof.

iii) Article 129 of the Qanun-e-Shahadat, 1984 provides that if any evidence available with the parties is not produced then it shall be presumed that had that evidence been produced the same would have been gone against the party producing the same.

iv) By improving their previous statements, the prosecution witnesses impeach their own credit as per Article 151 (3) of QSO...

v) It is trite that the delayed recording of the statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898 reduces its value to nothing unless there is plausible explanation for such delay.

vi) The prosecution witnesses, in their statements before the learned trial court, did not state either the make or the colour or the registration number or the model number of the motorcycle upon which they had allegedly seen taking of deaed body of deceased by accused to its burial place, therefore, the recovered motorcycle does not prove such fact.

vii) It has been observed that the said Gandasa was never sent to the Punjab Forensic Science Agency, Lahore for analysis and therefore, its recovery is inconsequential.

viii) In the absence of any voice call data or record, simply the production of the Call Data Record without the disclosure of the details of the conversation is not relevant to prove any fact supporting the prosecution case against the accused.

ix) A tainted piece of evidence cannot corroborate another tainted piece of evidence.

x) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather, if only a single circumstance creating reasonable doubt in the mind of a prudent person is available, then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusion: i) See above under analysis no. 01.

ii) Suspicion, however grave it may be, can never be treated as a substitute for proof.

iii) Article 129 of the Qanun-e-Shahadat, 1984 provides that if any evidence available with the parties is not produced then it shall be presumed that had that evidence been produced the same would have been gone against the party producing the same.

iv) By improving their previous statements, the prosecution witnesses impeach their own credit.

v) It is trite that the delayed recording of the statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898 reduces its value to nothing unless there is plausible explanation for such delay.

vi) See above under analysis no. vi.

vii) If the weapon is not sent to the Punjab Forensic Science Agency, Lahore for analysis, its recovery is inconsequential.

viii) In the absence of any voice call data or record, simply the production of the Call Data Record without the disclosure of the details of the conversation is not relevant to prove any fact supporting the prosecution case against the accused.
ix) A tainted piece of evidence cannot corroborate another tainted piece of evidence.
x) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances.

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31. **Lahore High Court**
The State v. Muhammad Arif
Murder Reference No.135 of 2019
Muhammad Arif v. The State
Criminal Appeal No. 1150-J of 2019
Ghulam Yaseen v. The State and two others
Petition for Special Leave to Appeal No.130 of 2019
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC7265.pdf

Facts: The appellant was convicted in the case instituted upon the private complaint in respect of offences under sections 302 and 34 P.P.C.,feeling aggrieved wherefrom, he lodged criminal appeal assailing his conviction and sentence. The learned trial court submitted murder reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant. The complainant of the case filed petition for special leave to appeal seeking permission to file an appeal against the acquittal of the co-accused of the appellant. Now, disposal of the criminal appeal, the petition for special leave to appeal and the murder reference is intended through this single judgment.

Issues: i) What is the effect of failure of the prosecution to prove the reason for presence of chance witnesses at the place of occurrence?
ii) What would be the status of the prosecution evidence when the prosecution witnesses made blatant improvements to their previous statements?
iii) What does *Rigor mortis* mean*?*

Analysis: i) The chance witnesses are under a bounden duty to provide a convincing reason for their presence at the place of occurrence, at the time of occurrence, to prove their presence by producing some consistent evidence, to adduce physical proof of reason for their arrival at the place of occurrence as well as their presence at the place and time of occurrence.
ii)The fact that the prosecution witnesses made blatant improvements to their previous statements in order to bring the ocular account, in line with the report of post mortem examination of the dead body indicates that they made a deliberate and dishonest departure from their earlier narrations of the occurrence.
iii) The *rigor mortis* is a term which stands for the stiffness of voluntary and involuntary muscles in human body after death. It starts within 2 to 4 hours of death and fully develops in about 12 hours in temperate climate. Similarly, the

reverse process with which *rigor mortis* disappears is called *algor mortis*.In temperate climate the rigor mortis completes in 8 to 12 hours.

Conclusion: i) The failure of the prosecution to prove the reason for presence of chance witnesses at the place of occurrence vitiates the trust of the court in chance witnesses as being truthful witnesses.
ii) By improving their previous statements, the prosecution witnesses impeach their own credit for being not relied upon.
iii) *Rigor mortis*, being the process of the stiffness of voluntary and involuntary muscles in human body after death, generally occurs while the dead body is cooling.

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32. **Lahore High Court**
The State v. Irfan alias Punna
Murder Reference No.64 of 2018
Irfan alias Punna and another v. The State and another.
Crl. Appeal No. 518 of 2019
Khalid Hussain v. The State and four others.
Criminal Appeal No.674 of 2019
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC7173.pdf

Facts: Additional Sessions Judge, for offences under sections 302,334,324, 148 and 149 P.P.C, at the conclusion of trial convicted one of the appellants/convicts under Section 302(b) PPC and sentenced to death as Tazir with a direction to pay a sum of Rs.200,000/- as compensation under Section 544-A Cr.P.C. to the legal heirs of deceased, in default thereof to further undergo six months S.I and other one under section 302(b) PPC and sentenced Imprisonment for life as Tazir for committing Qatl-i-Amd of same victim with a direction to pay fine of Rs.200,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of the deceased, in case of default of payment of compensation amount, the convict was directed to undergo further six months of simple imprisonment. The appellants/convicts filed criminal appeal against their convictions and sentences and the learned trial court transmitted murder reference for confirmation or otherwise of death sentence of the first one appellant being originated from the same judgment. The complainant of the case also filed Criminal Appeal against the acquittal of the co-accused from the same charges.

Issues: i) Whether the chance witnesses are under bounden duty to provide a convincing reason for their presence at the place of occurrence, at the time of occurrence?
ii) Whether non production or non-availability of the vehicle used by the prosecution witnesses to arrive at the place of occurrence is fatal to the prosecution case?
iii) Whether it is duty of prosecution to establish the reason for which prosecution witnesses had proceeded at the place of occurrence as well as the mode through which they arrived over there?

iv) Whether the courts can presume the existence of any facts which runs counter to natural human conduct and behaviour?
v) Whether dishonest improvements to the previous statements by the prosecution witnesses impeach their credit?
vi) Whether such witnesses can be believed, who are unable to depose the facts regarding place of post mortem examination in connection with other facts?
vii) Whether recovery of case property in violation of the provisions of the section 103 Code of Criminal Procedure, 1898 can be used as incriminating evidence?
viii) Whether delayed transmission of empty cartridges towards the Forensic Science Agency raised chances of fabrication?
ix) Whether recovery has lost its evidentiary value when the ocular account is found to be unreliable?
x) Whether motive is a double-edge weapon, which can cut either way?
xi) Whether in the absence of any report of Forensic Science Agency about the genuineness of video footage as stored in the USB flash drive, taken into possession through recovery memo can be relied as evidence?
xii) Whether conviction can be upheld on the basis of medical evidence alone?
xiii) Whether a single circumstance creating reasonable doubt is sufficient to extend benefit to an accused as matter of right?
xiv) Whether double presumption of innocence has been attached with the accused after acquittal recorded in his favor through facing trial?

Analysis: i) When the prosecution witnesses once termed as "chance witnesses" then they are under a bounden duty to provide a convincing reason for their presence at the place of occurrence, at the time of occurrence and were also under a duty to prove their presence by producing some physical proof of the same(…)
ii) The non-production and the non-availability of the motorcycles used by the prosecution witnesses to arrive at the place of occurrence and the failure of the prosecution witnesses to produce the same before the Investigating Officers of the case, despite their repeated demands, leads to only one conclusion and that being that no such motorcycles were available. Had such motorcycles been used by the prosecution witnesses to arrive at the place of occurrence, then the same must have been available at the place of occurrence, at the time of arrival of SI (PW), the Investigating Officer of the case and (CW) and the same would necessarily have been taken into possession by the Investigating Officers of the case but they were not and it proves that a false claim was made by the prosecution witnesses that they had arrived at the place of occurrence on two motorcycles. In this manner, the prosecution witnesses failed miserably to prove that they had indeed arrived at the place of occurrence, at the time when the same was happening(…)
iii)The prosecution was under a bounden duty to establish not only that the prosecution witnesses had a reason to proceed to the place of occurrence but also to prove the mode through which the prosecution witnesses arrived at the place of occurrence. The failure of the prosecution to prove the said fact has vitiated the trust in (PW-1),(PW-2) and (PW-3) as being truthful witnesses.(…)

iv) Article 129 of the Qanun-e-Shahadat Order, 1984 allows the courts to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case. We thus trust the existence of this fact, by virtue of the Article 129 of the Qanun-e-Shahadat Order, 1984, that the conduct of the assailants, as deposed to by the prosecution witnesses was opposed to the common course of natural events and human conduct(…)

v) By improving their previous statements, the prosecution witnesses impeached their own credit. As the prosecution witnesses introduced dishonest, blatant and substantial improvements to their previous statements and were duly confronted with their former statements, hence their credit stands impeached and the prosecution witnesses cannot be relied upon on, being proved to have deposed with a slight, intended to mislead the court. The august Supreme Court of Pakistan in the case of "Muhammad Ashraf Vs. State" (2012 SCMR 419) took serious notice of the improvements introduced by witnesses and rejected their evidence (…)

vi) The witnesses who did not even know where the post mortem examination of the dead body was conducted cannot be believed with regard to other facts deposed by them.

vii) Regarding the recovery of the *Repeater* gun and the Toka from the accused, the same cannot be relied upon as the Investigating Officer of the case, did not join any witness of the locality during the recovery of the *same*, which was in clear violation of section 103 Code of Criminal Procedure, 1898…Therefore, the evidence of the recovery of the *Repeater* gun and the *Toka* from the accused persons cannot be used as incriminating evidence against them, being evidence that was obtained through illegal means and hence hit by the exclusionary rule of evidence(…)

viii) The empty cartridges taken into possession from the place of occurrence were sent to Punjab Forensic Science Agency, Lahore with delay, though there was no reason for keeping the empty cartridges which were taken into possession of on the day of occurrence at the Police Station and not sending them to the office of Punjab Forensic Science Agency. In this manner the report of Punjab Forensic Science Agency, regarding the comparison of the empty cartridges taken from the place of occurrence with the *Repeater* guns recovered from the appellants, has no evidentiary value as the possibility of fabrication is apparent(…)

ix) It is an admitted rule of appreciation of evidence that recovery is only a supporting piece of evidence and if the ocular account is found to be unreliable, then the recovery has no evidentiary value.

x) It is settled law that motive is a double-edge weapon, which can cut either way; if it was the reason for the appellants to murder the deceased, it equally was a ground for the complainant to falsely implicate them in this case.

xi) Investigating Officer of the case, admittedly did not record the statement of the person who had recorded the video footage as stored in the USB flash drive ,taken

into possession through recovery memo. Admittedly no person who had recorded the video footage as stored in the USB flash drive, taken into possession through recovery memo, appeared before the learned trial court as a witness. Moreover the video footage as stored in the USB flash drive, taken into possession through recovery memo was not analyzed by the Punjab Forensic Science Agency, Lahore regarding its genuineness or otherwise. In the absence of any report of the Punjab Forensic Science Agency, Lahore about the genuineness or otherwise of the said video footage as stored in the USB flash drive ,taken into possession through recovery memo, no reliance can be placed on such piece of evidence(…)

xii) Medical evidence by its nature and character, cannot recognize a culprit in case of an unobserved incidence. As all the other pieces of evidence relied upon by the prosecution in this case have been disbelieved and discarded by this Court, therefore, the appellant's conviction cannot be upheld on the basis of medical evidence alone (…)

xiii) It is a settled principle of law that for giving benefit of the doubt it is not necessary that there should be so many circumstances rather, if only a single circumstance creating reasonable doubt in the mind of a prudent person is available, then the such benefit is to be extended to an accused not as a matter of concession but as of right.

xiv) According to established principle of the criminal administration of justice once an acquittal is recorded in favour of accused facing criminal charge he enjoys double presumption of innocence, therefore, the courts competent to interfere in the acquittal order should be slow in converting the same into conviction, unless and until the said order is patently illegal, shocking, based on misreading and non-reading of the record or perverse…

Conclusion: i) Yes, chance witnesses are under bounden duty to provide a convincing reason for their presence at the place of occurrence, at the time of occurrence.

ii) Yes, non-production or non-availability of the vehicle used by the prosecution witnesses to arrive at the place of occurrence is fatal to the prosecution case.

iii) Yes, it is duty of prosecution to establish the reason for which prosecution witnesses had proceeded at the place of occurrence as well as the mode through which they arrived over there.

iv) Yes, under Article 129 of the Qanun-e-Shahadat Order, 1984 the courts can presume the existence of any facts which runs counter to natural human conduct and behaviour.

v) Yes, dishonest improvements to the previous statements by the prosecution witnesses impeached their credit.

vi) Such witnesses cannot be believed, who are unable to depose the facts regarding place of post mortem examination in connection with other facts.

vii) Recovery of case property in violation of the provisions of the section 103 Code of Criminal Procedure, 1898 cannot be used as incriminating evidence.

viii) Yes, delayed transmission of empty cartridges towards the Forensic Science Agency raised chances of fabrication.

ix) Yes, recovery loses its evidentiary value when the ocular account is found to be unreliable.
x) Yes, motive is a double-edge weapon, which can cut either way.
xi) In the absence of any report of Forensic Science Agency about the genuineness of video footage as stored in the USB flash drive, taken into possession through recovery memo cannot be relied as evidence.
xii) Conviction cannot be upheld on the basis of medical evidence alone.
xiii) Yes, a single circumstance creating reasonable doubt is sufficient to extend benefit to an accused as matter of right.
xiv) Yes, double presumption of innocence has attached with the accused after acquittal recorded in his favor through facing trial.

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33. **Lahore High Court**
The State v. Shahid alias Shahra
Murder Reference No.11 of 2019
Shahid alias Shahra v. The State
Criminal Appeal No. 953-J of 2018
Barkhurdar v. Khizar Hayat and three others
Criminal Appeal No.1154 of 2018
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC7232.pdf

Facts: The appellant of Criminal Appeal against conviction was tried alongwith other three co-accused by the Additional Sessions Judge in case F.I.R registered in respect of offences under sections 302 and 34 P.P.C. The appellant was convicted with death under section 302(b) PPC as Tazir and directed to pay compensation. However other co-accused persons were acquitted. Feeling aggrieved, the convict lodged Criminal Appeal through Jail assailing his conviction and sentence. The learned trial court submitted Murder Reference seeking confirmation. The complainant of the case filed Criminal Appeal against the acquittal of the co-accused persons.

Issues: i) Whether chance witness is under a duty to explain and prove his presence at the place of occurrence, at the time of occurrence?
ii) Whether a court can presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case?
iii) Whether failure of the prosecution witnesses to prove the presence of any light source at the place of occurrence, at the time of occurrence of dark night, has repercussions, entailing the failure of the prosecution case?
iv) Whether omission of sending alleged blood stained clothes of the prosecution witness to the Forensic Science Agency for examination and grouping with that of the blood-stained clothes of the deceased creates doubt in prosecution case?
v) Whether delay in post mortem examination is reflective of the absence of witnesses?
vi) Whether recovery of weapon of offence effected from the accused in violation

of the provisions of the section 103 Code of Criminal Procedure, 1898 hit by the exclusionary rule of evidence?

vii) Whether recovery has any evidentiary value when ocular account is found to be unreliable?

viii) Whether motive alone can be made basis of conviction when ocular account is found to be unreliable?

ix) Whether medical evidence alone can be made basis of conviction when ocular account is found to be unreliable?

x) Whether benefit of doubt of any single circumstance creating reasonable doubt in the mind of a prudent person can be extended to an accused as a matter of right?

xi) Whether acquittal of an accused facing criminal charge creates double presumption of innocence?

Analysis: i) In view of the above mentioned facts, it can be validly held that the prosecution witnesses were "chance witnesses" and therefore were under a duty to explain and prove their presence at the place of occurrence, at the time of occurrence. A perusal of the statements of prosecution witnesses reveals that both the prosecution witnesses failed to provide any reason, consistent with the attending circumstances, due to which reason they left their houses at night and proceeded to the place of occurrence.

ii) Article 129 of the Qanun-e-Shahadat Order, 1984 allows the courts to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case.

iii) The non-production of any light source, available and lit at the place of occurrence, at the time of occurrence and the failure of the complainant of the case as well as the Investigating Officer of the case to produce the same before the learned trial court leads to only one conclusion and that being that no such source of light was available with the witnesses or available at the place of occurrence which could have enabled the eye witnesses to have identified the assailant and also spectate the role of the assailant as acted by him during the occurrence. The prosecution witnesses failed to establish the fact of availability of any light source at the place of occurrence, at the time of occurrence and in the absence of their ability to do so, we cannot presume the existence of such a light source. The absence of any light source has put the whole prosecution case in the murk. It was admitted by the witnesses themselves that it was a dark night and as the prosecution witnesses failed to prove the availability of any light source, their statements with regard to them identifying the assailant cannot be relied upon. The failure of the prosecution witnesses to prove the presence of any light source at the place of occurrence, at the time of occurrence, has repercussions, entailing the failure of the prosecution case.

iv) We have also noted that the prosecution witnesses claimed that their clothes were smeared with the blood of the deceased, however at the same time also

admitted that they did not hand over the said clothes to the Investigating Officer of the case… The Investigating Officer of the case, did not take any such blood-stained clothes of the prosecution witness in possession during the investigation of the case, however, if the Investigating Officer of the case had taken the clothes of prosecution witness which clothes according to the prosecution witnesses were stained with blood, into possession and if these were sent to the Punjab Forensic Science Agency, Lahore for examination and grouping with that of the blood-stained clothes of the deceased, the same would have provided the strongest corroboration to the testimony of the prosecution witnesses but now the omission creates doubt of equal magnitude.

v) We have also noted with disquiet that the postmortem examination of the dead body of the deceased was conducted with much delay… The perusal of the Post Mortem Examination Report (Exh.PH) as well as the statement of Dr. clearly establishes the fact the post mortem examination of the dead body of the deceased was delayed and the delay was due to the late submission of police papers. No explanation was offered to justify the said delay in conducting the post mortem examination. This clearly establishes that the witnesses claiming to have seen the occurrence were not present at the time of occurrence and the delay in the post mortem examination was used to procure their attendance and formulate a false narrative after consultation and concert. It has been repeatedly held by the august Supreme Court of Pakistan that such delay in the post mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person.

vi) The learned Additional Prosecutor General and the learned counsel for the complainant have also relied upon the recovery of the Pistol from the appellant and have submitted that the said recovery from the appellant offered sufficient corroboration of the ocular account of the occurrence as furnished by the prosecution witnesses. The recovery of the Pistol from the appellant cannot be relied upon as the Investigating Officer of the case did not join any witness of the locality during the recovery of the Pistol from the appellant which action of his was in clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898… Therefore the evidence of the recovery of the Pistol from the appellant cannot be used as incriminating evidence against the appellant, being evidence which was obtained through illegal means and hence hit by the exclusionary rule of evidence.

vii) In this manner, the prosecution witnesses failed to prove the exclusive possession of the appellant regarding the recovered Pistol. In this manner, the recovery of the Pistol from the appellant could not be proved and cannot be considered as a relevant fact for proving any fact in issue. Even otherwise, as we have disbelieved the ocular account in this case, hence, the evidence of recovery of the Pistol would have no consequence. It is an admitted rule of appreciation of evidence that recovery is only a corroborative piece of evidence and if the ocular account is found to be unreliable, then the recovery has no evidentiary value.

viii) The prosecution witnesses failed to prove the fact that the said motive was so compelling that it could have led the appellant to have committed the Qatl-i-Amd of the deceased. There is a haunting silence with regard to the minutiae of motive alleged. No independent witness was produced by the prosecution to prove the motive as alleged. Moreover, it is an admitted rule of appreciation of evidence that motive is only corroborative piece of evidence and if the ocular account is found to be unreliable then motive alone cannot be made basis of conviction. Even otherwise a tainted piece of evidence cannot corroborate another tainted piece of evidence.

ix) The only other piece of evidence left to be considered is the medical evidence with regard to the injuries observed on the dead body of the deceased by Dr. but the same is of no assistance in this case as medical evidence by its nature and character, cannot recognize a culprit in case of an unobserved incidence. As all the other pieces of evidence relied upon by the prosecution in this case have been disbelieved and discarded by us, therefore, the appellant's conviction cannot be upheld on the basis of medical evidence alone.

x) It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather, if only a single circumstance creating reasonable doubt in the mind of a prudent person is available, then such benefit is to be extended to an accused not as a matter of concession but as of right.

xi) It is important to note that according to the established principle of the criminal administration of justice once an acquittal is recorded in favour of the accused facing criminal charge he enjoys double presumption of innocence, therefore, the courts competent to interfere in the acquittal order should be slow in converting the same into conviction, unless and until the said order is patently illegal, shocking, based on misreading and non-reading of the record or perverse.

Conclusion: i) A chance witness is under a duty to explain and prove his presence at the place of occurrence, at the time of occurrence.

ii) Article 129 of the Qanun-e-Shahadat Order, 1984 allows the courts to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case.

iii) Failure of the prosecution witnesses to prove the presence of any light source at the place of occurrence, at the time of occurrence of dark night, has repercussions entailing the failure of the prosecution case.

iv) Omission of sending alleged blood stained clothes of the prosecution witness to the Forensic Science Agency for examination and grouping with that of the blood-stained clothes of the deceased creates doubt in prosecution case.

v) Delay in post mortem examination is reflective of the absence of witnesses.

vi) Recovery of weapon of offence effected from the accused in violation of the provisions of the section 103 Code of Criminal Procedure, 1898 hit by the exclusionary rule of evidence.

vii) Recovery has no evidentiary value when ocular account is found to be unreliable.
viii) Motive alone cannot be made basis of conviction when ocular account is found to be unreliable.
ix) Medical evidence alone cannot be made basis of conviction when ocular account is found to be unreliable.
x) Benefit of doubt of any single circumstance creating reasonable doubt in the mind of a prudent person can be extended to an accused as a matter of right.
xi) Acquittal of an accused facing criminal charge creates double presumption of innocence.

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34. **Lahore High Court**
Abbas Ali v. The State and six others
Writ Petition No.16927 of 2023
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2023LHC7300.pdf

Facts: Through this petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 read with section 561-A Cr.P.C., the order passed by the learned Magistrate and the order passed by the learned Additional Sessions Judge, whereby, the application of the petitioner for allowing the learned counsel for the petitioner to cross examine (respondent No.7), the victim of the case F.I.R registered at Police Station was rejected are sought to be be set-aside.

Issues: i) Whether an opportunity to cross examine the victim shall be given to the counsel for the accused and not to the accused in rape cases under the mandatory provision of section 14(2) of the Anti-Rape (Investigation and Trial) Act, 2021?
ii) What is the ultimate test to determine whether a provision is mandatory or directory?
iii) What is the consequence of non-compliance of a mandatory provision?

Analysis: i) As per section 14(2) of the Anti-Rape (Investigation and Trial) Act, 2021, it has been made mandatory that an opportunity to cross examine the victim shall be given to the counsel for the accused and not to the accused… The provisions of section 14(2) of the Anti-Rape (Investigation and Trial) Act, 2021, are unambiguous in their meaning and are mandatory in nature, as the word "shall" has been used in the same and it has been made mandatory that an opportunity to cross examine the victim shall be given to the counsel for the accused and not to the accused.
ii) It is settled law that when the word 'shall' is used in a provision of law, it is to be construed in its ordinary grammatical meaning and normally the use of word 'shall' by the legislature brands a provision as mandatory. The ultimate test to determine whether a provision is mandatory or directory is that of ascertaining the legislative intent. While the use of the word 'shall' is not the sole factor which determines the mandatory or directory nature of a provision, it is certainly one of

the indicators of legislative intent. Other factors include the presence of penal consequences in case of non-compliance, but perhaps the clearest indicator is the object and purpose of the statute and the provision in question. It is the duty of the Court to garner the real intent of the legislature as expressed in the law itself.
iii) Another aspect of the matter is that when a statute requires that a thing should be done in a particular manner or form, it has to be done in such manner. The non-compliance of a mandatory provision would invalidate such an act.

Conclusion: i) As per section 14(2) of the Anti-Rape (Investigation and Trial) Act, 2021, it has been made mandatory that an opportunity to cross examine the victim shall be given to the counsel for the accused and not to the accused.
ii) The ultimate test to determine whether a provision is mandatory or directory is that of ascertaining the legislative intent. Other factors include the presence of penal consequences in case of non-compliance, but perhaps the clearest indicator is the object and purpose of the statute and the provision in question.
iii) The non-compliance of a mandatory provision would invalidate such an act.

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35. **Lahore High Court**
Adnan Sami Khan v. Government of Punjab through Additional Chief Secretary (Home), Government of Punjab, Home Department, Lahore and six others
Writ Petition No. 6977 of 2023
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2023LHC7103.pdf

Facts: The petitioner under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 has assailed the order passed by the Deputy Commissioner, respondent No.4, whereby a citizen was ordered to be arrested and detained for a period of thirty days with immediate effect. It was further ordered that the custody of the person shall be placed under the superintendence of the Superintendent, District Jail.

Issues: i) Whether liberty of any citizen is an “inalienable right” of the citizen?
ii) Whether it is necessary to assail the order passed under section 3 of the Punjab Maintenance Public Order Ordinance, 1960 before the Additional Chief Secretary (Home) prior to filing the writ petition against the order of detention?
iii) Whether right to protest is implied in "the right to assemble peacefully", in the "right to form associations or unions", in the "right to form or be a member of a political party" and in the "in the right to freedom of speech and expression"?
iv) Whether association with a political party is a valid ground to deprive a citizen from benefit which law provides in his favour?

Analysis: i) The Constitution of Islamic Republic of Pakistan, 1973 guarantees that no person shall be deprived of life or liberty saved in accordance with law. Liberty of any citizen is an “inalienable right” of the citizen enshrined in article 4 and embodied in article 9 of the Constitution of the Islamic Republic of Pakistan,

1973 and the detention of any citizen would tantamount the violation of fundamental rights guaranteed under articles 2-A, 3,4,9,14 & 18 of the Constitution of Islamic Republic of Pakistan, 1973. Even otherwise, the preamble of Punjab Maintenance Public Order Ordinance, 1960 law is made to ease public and ensure public safety, public interest and maintenance of public order and the applicability of the provisions of a public maintenance order is subject to guarantee provided by the Constitution of the Islamic Republic of Pakistan, 1973.

ii) I also do not agree with the learned Law Officer that prior to filing the writ petition against the order of detention, it is necessary to assail the order passed under section 3 of the Punjab Maintenance Public Order Ordinance, 1960 before the Additional Chief Secretary (Home), Government of Punjab, Home Department, Lahore.

iii) The right to protest is also implied in "the right to assemble peacefully", in the "right to form associations or unions", in the "right to form or be a member of a political party" and in the "in the right to freedom of speech and expression"… Political parties are institutions of very great importance under our form of government. They are, in fact, the effective instrumentalities by which the will of the people may be made vocal, and the enactment of laws in accordance therewith made possible. So potent have they become in determining the measures and in administering the affairs of government that they are now regarded as inseparable from, if not essential to, a republican form of government. The people have an inherent right to form, organize, and operate political parties and to reorganize an old political party. This is included in the right of suffrage. It has been characterised as "an inalienable right guaranteed by the Constitution."

iv) Moreover, even the Apex Court of the country does not consider being associated with a political party as a valid ground to deprive a citizen from benefit which law provides in his favour and the liberty of any person cannot be curtailed on this ground.

Conclusion: i) Liberty of any citizen is an “inalienable right” of the citizen enshrined in article 4 and embodied in article 9 of the Constitution of the Islamic Republic of Pakistan, 1973.

ii) It is not necessary to assail the order passed under section 3 of the Punjab Maintenance Public Order Ordinance, 1960 before the Additional Chief Secretary (Home) prior to filing the writ petition against the order of detention.

iii) The right to protest is implied in "the right to assemble peacefully", in the "right to form associations or unions", in the "right to form or be a member of a political party" and in the "in the right to freedom of speech and expression"

iv) Association with a political party is not a valid ground to deprive a citizen from benefit which law provides in his favour.

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36. **Lahore High Court**
Mst. Haseena Mai. v The State and 04 others
Criminal Revision No.336 of 2023.
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2023LHC7438.pdf

Facts: Through this petition filed under sections 435 and 439 Cr.P.C., the petitioner has assailed the order passed by the learned Additional Sessions Judge whereby the application submitted by the petitioner under section 540 Cr.P.C. seeking the summoning and examination of a witness was dismissed by the learned trial court.

Issues: i) Under what circumstances, summoning of a witness cannot be justified under the provisions of section 540 of Cr.P.C?
ii) What is the procedure for the production of the witnesses mentioned in the provision of section 265-F Cr.P.C?

Analysis: i) When in the estimation of the court the evidence of a witness is not essential for the just decision of the case and when even otherwise the statement intended to be made has no bearing upon the prosecution case and the facts in issue and the relevant facts, then his summoning cannot be justified under the provisions of section 540 of Cr.P.C. Further, if the trial of the case has been instituted upon the private complaint and it has not been explained at all as to why the said witness was not cited as a witness in the calendar of witnesses appended with the private complaint itself.
ii) The provision of section 265-F Cr.P.C. provide the procedure for the production of the witnesses and under the provisions of section 265-F Cr.P.C., it has been provided that if the accused does not plead guilty, the court shall proceed to hear the complainant and take all such evidence as may be produced in support of the prosecution and it shall ascertain from the complainant the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the complainant and shall summon such persons to give evidence before it

Conclusion: i) Summoning of a witness cannot be justified when the evidence of a witness is not essential for the just decision of the case and the statement intended to be made has no bearing upon the prosecution case.
ii) Under the provision of section 265-F Cr.P.C., it has been provided that if the accused does not plead guilty, the court shall proceed to hear the complainant and take all such evidence as may be produced in support of the prosecution.

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37. **Lahore High Court**
Muhammad Ajmal v. Ex-Officio Justice of Peace/Additional Sessions Judge, Burewala, and ten others.
Writ Petition. No.15477 of 2021
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2023LHC7096.pdf

Facts: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioner prayed that impugned order on the application of respondent No. 4 passed by learned respondent No. 1 may kindly be declared illegal, and against law and facts of the case, the same be set aside and the application U/S 22-A Cr.P.C of the Respondent No 4 may kindly be dismissed.

Issues: i) Whether an order can be passed upon the application U/S 22-A/22-B Cr.P.C which itself reveals commission of a non-cognizable offence?
ii) Whether a person would be punished for an act which was not punishable by law at the time of the act or omission?

Analysis: i) According to the Schedule-II of the Code of Criminal Procedure, 1898, police shall not arrest without warrant any person alleged to had committed the offence made punishable under section 498-A P.P.C. making the offence made punishable under section 498-A P.P.C. a non-cognizable offence. Obviously, an F.I.R cannot be ordered for the registration of a non-cognizable offence which section 498-A P.P.C is and which offence the respondent No.4 namely Ghafooran Bibi had complained that the petitioner and the other accused had committed. The available material *prima facie* does not reveal commission of any cognizable offence. As is obvious, an F.I.R. cannot be registered with regard to a non-cognizable offence.
ii) …according to the application the respondent No.4 namely Ghafooran Bibi, she was deprived of the inherited property of her deceased husband at the time of opening of succession and Inheritance mutation No. 641 of 17.05.2010 was got entered in the revenue record. The act of depriving a woman of inheriting property was made an offence as defined under section 498-A P.P.C. by way of the Criminal Law (Third Amendment) Act of 2011 which received the ascent of President of Pakistan on 26th December, 2011. According to the application of the respondent No.4 herself she was deprived of her inheritance on 17.05.2010. Such an act had not been made punishable under section 498-A P.P.C. by then. Article 12 of the Constitution of Islamic Republic of Pakistan, 1973 provides that no person would be punished for an act which was not punishable by law at the time of the act or omission.

Conclusion: i) An order cannot be passed upon the application U/S 22- A/22-B Cr.P.C which itself reveals commission of a non-cognizable offence.
ii) A person would not be punished for an act which was not punishable by law at the time of the act or omission.

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38. **Lahore High Court**
Mst. Arzoo v. District Police Officer and three others.
W.P. No. 12826 of 2023
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2023LHC7114.pdf

Facts: Through this petition filed under the Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 read with section 491 of the Code of Criminal Procedure, 1898, the petitioner sought the custody of her minor son.

Issues: i) Whether the adoptive parents should be declared or presumed to be the real parents of the adopted child and how adopted children are further classified?
ii) What law in Pakistan deals with the issue of adoption and is it recognized under the Succession Act, of 1925?
iii) What is the paramount consideration for exercising the jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 in case of the minor child?
iv) Whether a distinction exists between guardianship and custody?

Analysis: i) As far as an adopted child of known parentage is concerned, according to Islamic concept, he/she must be recognized through his /her natural biological parents, the evidence emerges from the following verses of the Quran (…) verses clearly distinguish between the adopted children of known as well as of unknown lineage. It clearly orders for relating the identity of the adopted children with their biological parents if known but for those with the unknown parentage, it permits, rather prescribes that they may be treated and identified as your brothers and associates. This issue of lineage was again emphasized in the last Sermon of the Holy Prophet (PBUH) in which he categorically warned that no one should change his lineage. The adoption of child has no legal effect in Shariah rather it is for emotional and psychological satisfaction. The adoptive parents may treat an adopted child as their natural child in the matters of love, affection and general behaviour. The adoption of a child with the purpose of providing shelter to him is virtuous and carries much reward for welfare of the Child but adoption in Islam has no legal consequence. The child should be attributed to the natural parents, and not to the father or mother who has adopted him and marriage of adopted children with natural children of adoptive parents is not prohibited unless they relate to each other in a prohibited degree. In short, adoption does not create a new legal relationship which did not exist before adoption.
ii) Until now no law in Pakistan addresses the issue of adoption. However, the process of adoption is carried out in the name of custody of the person of the child under the Guardians and Wards Act, 1890. The adoptive parents apply to the court under the provisions of the Guardians and Wards Act, 1890 and in the case of a child with known parentage, make the biological parents of the child as respondent who usually give consenting statement in favour of the applicant, adoptive parent. Adoption has not been defined nor is recognized under the Succession Act, of 1925. Succession to the movable and immovable property of any intestate Pakistani is governed under the laws of Pakistan in terms of section 5 of the Succession Act, 1925. Degree of kindred is computed in the manner set out in the Schedule 1 to the Succession Act, 1925. The adopted child does not find any mention in the category of kindred upon whom the property of intestate upon his death may devolve. According to the succession laid down under the

Succession Act, 1925, an adopted child is not an heir or kindred entitled upon intestacy to inherit the estate of his adoptive parent. Adoption under 'Muslim Law' does not create any kindred relationship between the adopted child and adoptive parent whosoever.

iii) This Court, in the exercise of its jurisdiction under article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 has to exercise parental jurisdiction and is not precluded in any circumstance, from giving due consideration to the welfare of a minor and to ensure that no harm or damage comes to him physically or emotionally. There is no cavil that this Court is competent to entertain a habeas corpus petition under article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 and direct that a person in custody within its territorial jurisdiction be brought before it and satisfy itself that the said detenue is not being held in improper or illegal custody. However, the proceedings in the habeas corpus jurisdiction are summary in nature and this Court cannot conduct a detailed inquiry. The only and the paramount consideration for exercising the jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 must be the welfare of the child. The basic consideration always is to provide the child with the most natural, most considerate and most compassionate atmosphere to grow up as a better member of the society.

iv) Many people conflate custody with guardianship while the two terms describe very different things. There exists a distinction between guardianship and custody. Under sections 4(2), (S), 9(i) and 25 of the Guardians and Wards Act 1890, “guardianship” and “custody” are not held to be synonymous terms. It is observed that “guardian” as defined in S. 4(2) means a person providing de facto or de jure care of the person or property of a minor. Such a person may or may not have the custody of a minor. Custody describes a parent’s care of a child, whereas legal guardianship is granted to someone who is not necessarily the child’s biological parent. Muslim Law, which gives the right of hizanat to the mother, has to be presumed to have considered it to be in the interest of the welfare of such a minor child to remain in the custody of his mother.

Conclusion: i) The adoptive parents should not be declared or presumed to be the real parents of the adopted child and adopted children further classified the adopted children with known parentage and unknown parentage/abandoned children.

ii) No law in Pakistan deals with the issue of adoption and it is not recognized under the Succession Act, of 1925.

iii) The only and the paramount consideration for exercising the jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 must be the welfare of the minor child.

iv) See analysis no. iv above.

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39. **Lahore High Court**
Malik Faisal Mahmood & another v. Shahid Ali & others
Regular First Appeal No.93 of 2021.
Mr. Justice Ahmad Nadeem Arshad, Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2023LHC7015.pdf

Facts: This Regular First Appeal is directed against the Order and Decree passed by learned Civil Judge 1st Class, pursuant whereto suit for specific performance of an agreement to sell was dismissed on account of failure of the plaintiffs to deposit the balance sale consideration in compliance of directions issued by the Court.

Issues: i) What is bilateral agreement?
ii) How can a vendee seek enforcement of reciprocal obligation of the vendor?
iii) What is difference between readiness and willingness to perform the contract and whether both are condition precedent for grant of relief of specific performance?
iv) Whether court is always bound to issue a decree of specific performance?

Analysis: i) Under the law, bilateral agreement is a document, by which parties create legal and enforceable obligations to be performed with mutual understanding involving each of them promise to implement an action in exchange for other party's action and parties promise each other that they will perform or refrain from performing an act and if one of the parties perform its part of agreement, it is the other party who has to perform its part as agreed between them.
ii) The onus at very initial stage from the institution of suit is on the vendee to satisfy the test of equity, firstly, that vendor actually refused to accept the sale consideration, secondly, the vendee who is seeking performance of agreement to sell having an ability was ready and willing at all material times to perform his/her part of agreement. In such circumstances, it is essential and imperative that vendee is bound to deposit the balance sale consideration in the Court. The test of law is even on higher pedestrian i.e. the vendee cannot even seek enforcement of reciprocal obligation of the vendor unless he is able to demonstrate not only his/her willingness but also his/her capability to fulfill his/her obligation under the contract. (…) In a suit for specific performance of agreement to sell, it is always of paramount consideration that the plaintiff seeking equitable remedy of specific performance must be always willing and ready to perform his part of contract and conduct must satisfy the court that he is entitled to seek relief. These tests are to be satisfied through his ability and readiness and willingness. The wisdom behind directing the vendee to deposit the balance sale consideration is not aimed to verify the vendee's seriousness but it also safeguards the rights of the vendor as such a direction is cautioned to strike a balance between two contracting parties.
iii) Readiness means the capacity of the Plaintiff to perform the contract, which would include the financial position to pay the purchase price. Willingness refers to the intention of the Plaintiff as a purchaser to perform his part of the contract.

Willingness is inferred by scrutinizing the conduct of the Plaintiff/purchaser, including attending circumstances. Continuous readiness and willingness on the part of the Plaintiff/purchaser from the date the balance sale consideration was payable in terms of the agreement to sell, till the decision of the suit, is a condition precedent for grant of relief of specific performance.

iv) It must be borne in mind that under Section 22 of the Specific Relief Act, 1877 the jurisdiction to issue a decree of specific performance is absolutely discretionary in its nature. Therefore, the Court in any event is not always bound to grant such relief merely because it is lawful to do so.

Conclusions: i) See above analysis portion.

ii) Vendee can seek enforcement of reciprocal obligation of the vendor if he is able to demonstrate not only his willingness but also his capability to fulfill his obligation under the contract.

iii) Readiness means the capacity of the Plaintiff to perform the contract, whereas, willingness refers to the intention of the Plaintiff as a purchaser to perform his part of the contract. Continuous readiness and willingness on the part of the plaintiff is a condition precedent for grant of relief of specific performance.

iv) Decree of specific performance is absolutely discretionary in its nature, therefore, the Court is not always bound to grant such relief merely because it is lawful to do so.

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40. **Lahore High Court**
Hajra Javaid Makhdoom v. Muhammad Tehmas Nasir, etc.
Writ Petition No. 59534 of 2022
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC6869.pdf

Facts: Through this writ petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has voiced his grievance against acquittal order passed by the magistrate and there after order in criminal revision before ASJ with the prayer that the case may be referred back to the Judicial Magistrate for re-trial and criminal revision may also be remanded back to Additional Sessions Judge.

Issues: i) Whether matter can be referred back by the High Court if prayer made in writ petition qua remanding the same to the both fora below at the same time?

ii) Whether the order of acquittal under section 249-A, Cr.P.C. is amenable to criminal revision or the same can be assailed before High Court through a petition for special leave to appeal as provided under section 417(2) Cr.P.C?

iii) Whether a petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, is competent against the order of acquittal under section 249-A, Cr.P.C?

iv) Whether criminal appeal and revision have different features?

Analysis: i) When the petitioner has prayed for the remand of case to the trial court as well as criminal revision to the court of Additional Sessions Judge. I am afraid that the prayer of the petitioner is misconceived, because, matter cannot be referred back to both the fora below at the same time. Even otherwise, supplication of the petitioner is without the backing of law…
ii) The criminal revision before the court of learned Additional Sessions Judge was not competent, because, an order of acquittal can only be assailed by way of remedy provided under section 417(2), Cr.P.C. and not otherwise…
iii) When the statute has provided a specific alternate remedy of appeal against acquittal, constitutional petition is not competent against such an order, therefore, the writ petition is not maintainable in the eyes of the law…
iv) It is noteworthy that criminal appeal and revision have different features. Appeal is filed on question of law and facts in the light of section 418, Cr.P.C. whereas in criminal revision only correctness, legality and propriety of any finding, sentence or order is to be seen. A criminal revision is not competent against the order of acquittal, because, it is prohibited according to section 439(4)(a) Cr.P.C.

Conclusion: i) Matter cannot be referred back by the High Court if prayer made in writ petition qua remanding the same to the both fora below at the same time.
ii) The order of acquittal under section 249-A, Cr.P.C. is not amenable to criminal revision rather the same can be assailed before High Court through a petition for special leave to appeal as provided under section 417(2) Cr.P.C.
iii) A petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, is not competent against the order of acquittal under section 249-A, Cr.P.C.
iv) Yes, criminal appeal and revision have different features.

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41. **Lahore High Court**
Rashid v. The State & another
Crl.Misc.No.3229-B of 2023
Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2023LHC6876.pdf

Facts: The petitioner sought pre-arrest bail in a criminal case registered against him and others for offences under sections 337-D, 337-A(i),337-F(i),337-L(2),354 & 34 PPC.

Issues: i) What is meant by the term ‘body cavity’ in reference to human anatomy, to attract an offence under section 337-D PPC?
ii) Whether a medical officer is considered a witness of truth in system of criminal administration of justice and what consequence may cause his/her erroneous opinion?

Analysis: i) The ‘body cavity’ is not defined in PPC and due to foregoing reason, the dictionary meaning of this expression is to be seen in accordance with principles

of interpretation of statute reiterated in various judgments by the Supreme Court of Pakistan (…) in different dictionaries, various meanings are assigned to the term 'body cavity'. In the Blakiston's Gould Medical Dictionary Fourth Edition, the term 'body cavity' is defined in the following manner:-"The peritoneal, pleural, and pericardial cavities, and that of the tunica vaginal testis". In Chambers English Dictionary 7th Edition, following meanings are assigned to 'body cavity':- "The coelom, or cavity in which the viscera of the higher animals lie". In consonance with the definitions so mentioned above, it can inexorably be concluded that the term 'body cavity' in reference to human anatomy can only be used for inner part of thorax and abdomen (…) it can also be gathered from the views of Islamic scholars and the case law mentioned above that injury in the body cavity for attracting the offence under Section 337-D PPC must be direct consequence of the trauma inflicted by the perpetrator and should not be its fall out and by product.

ii) I cannot resist to mention here that a medical officer is generally considered as a witness of truth in the scheme of things upon which the system of criminal administration of justice is structured. An erroneous opinion given by the doctor based either upon his incompetency or some sinister design can bring disastrous consequences for the litigant in a criminal case. The medical officers must realize that by tendering opinion in criminal cases, they contribute in safe administration of justice which gets polluted by incorrect reports.

Conclusion: i) The term 'body cavity' in reference to human anatomy can only be used for inner part of thorax and abdomen and an injury in the body cavity for attracting the offence under Section 337-D PPC must be direct consequence of the trauma inflicted by the perpetrator and should not be its fall out and by product.

ii) A medical officer is generally considered as a witness of truth in the scheme of things upon which the system of criminal administration of justice is structured and an erroneous opinion given by the doctor based either upon his incompetency or some sinister design can bring disastrous consequences for the litigant in a criminal case.

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42. **Lahore High Court**
Jamila Bibi v. SHO, etc.
Writ Petition No.79470-H/2023
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2023LHC7008.pdf

Facts: Through this Constitutional Petition under Article 199 of the Constitution of The Islamic Republic of Pakistan, 1973 read with Section 491 of the Code of Criminal Procedure, 1898 the petitioner sought recovery of the detenues from the illegal, improper and unauthorized custody of the police.

Issues: i) Weather Station Dairy is the main record of the affairs of the Police Stations and has paramount significance to determine the transparency and fairness in the process of arrest and detention?

ii) How a Station Diary is required to be maintained by the Police authorities?

Analysis: i) A Station Diary is a register required to be maintained to record day-to-day events that take place in a Police Station. Rule 22.49 of the Rules elaborates the matters to be entered in Station Diary. For effective monitoring of daily work schedules in a Police Station, to monitor such works in a regulated manner and to ensure that duties are discharged by the police officer as it would involve balancing the rights of people, be that of the accused or that of the victim of crimes or the society in general, said "Diary" is to be maintained at all Police Stations. The Station Diary is used to record every major and minor incident occurring within the jurisdiction of the Police Station in chronological order. Station Diary is the main record of the affairs of the Police Station and should contain everything of importance relating to the working of the Police Station (…) in cases where the question of illegal detention of a person in police custody is involved, Station Diary is of utmost importance to determine the transparency and fairness in the process of arrest and detention.

ii) A self-explanatory procedure has been provided in Rules 22.48 and 22.49 of the Rules regarding the maintenance of Station Diary, which further needs no elaboration. However, I am persuaded to issue clear directions to the concerned police authorities regarding the maintenance of Station Diary, as infra: -

I. In every Police Station, a Station Diary shall be maintained in accordance with Article 167 of the Order and Rules 22.48 & 22.49 of the Rules. A strict adherence to the aforesaid provisions of law shall be ensured without further fail.

II. Maintaining a computerized record of Station Diary is the need of the hour but the same cannot be permitted to be used to open a new venue to cover or legitimize the illegalities committed by the delinquent police officials, therefore, the computerized record of Station Diary shall be prepared in addition to the manual record. In case of any conflict between the two, the preference shall be given to the manual Station Diary.

III. Any wrong entry in the Station Diary by a police officer shall ordinarily entail his dismissal from the service as per Rule 22.50 of the Rules. Zero tolerance in this regard should be shown by the supervisory officers and in case of failure on the part of the supervisory officer to do the needful, he shall be accountable for the same.

IV. Properly printed books, to maintain the Station Diary, containing the proper number of pages, should be issued to every Police Station by the concerned Superintendent of Police. Only duly issued books shall be used for maintaining the Station Diary to rule out the possibility of any fabrication and alteration in the same. A Station Diary without page numbers creates room for modification and alteration.

V. Wrong entries in the Station Diary should be scored out by means of a single line and initialed by a Senior Police Officer and in no case any such wrong entry be mutilated or rendered illegal nor should paper be pasted over it.

VI. A District and Sessions Judge of every District may call for and inspect the Station Diaries of Police Stations in his district occasionally to ensure that those are maintained following the law in its letter and spirit. This power under Article 167(2) of the Order should be exercised regularly to keep a check on the proper maintenance of Station Diary.

Conclusion: i) Station Dairy is the main record of the affairs of the Police Stations and has paramount significance to determine the transparency and fairness in the process of arrest and detention.
ii) See above in analysis portion.

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43. **Lahore High Court**
M/s Samsara Couture House (Pvt.) Ltd. and another v. Syeda Khadija Batool and 2 others
F.A.O No. 7892 of 2020
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC6883.pdf

Facts: This appeal, under section 114 of Trade Marks Ordinance, 2001 (the 'Ordinance'), is directed against order passed under Order XXXIX, Rule 1 & 2 of the Code of Civil Procedure, 1908 (the 'Code') by Presiding Officer, Intellectual Property Tribunal.

Issues: i) What is to be taken into consideration by the courts at the interim stage in the cases of unregistered trademarks?
ii) Whether preventive relief in the cases of unregistered trademarks, should be granted as a matter of course?

Analysis: i) In the cases of unregistered trademarks, which are filed on the basis of prior use or goodwill acquired through such usage, at the interim stage, it is commonly important for the Courts to tentatively assess sales invoices, advertisements in print and electronic media as well as promotion through other tangible means, receipts, returns showing trade with the given name as well as other relevant documentary evidence filed by the two sides.
ii) It is settled that interim injunction, by its nature is a preventive relief preserving the status quo of the subject matter till the final conclusion of the suit. After ascertaining prima facie case, by assessing documents if available, the Courts must see the existence of the remaining two factors of balance of convenience and irreparable loss or injury. The preventive relief, in such circumstances and in the cases of unregistered marks, should not be granted as a

matter of course and it is suitable when existence of right by prior use or its creation as well as its infringement are demonstrated with some clarity.

Conclusion: i) See above in analysis clause.
ii) The preventive relief in the cases of unregistered marks, should not be granted as a matter of course.

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44. **Lahore High Court**
Nazir Ahmad & another v. Muhammad Siddique
Civil Revision No. 849 of 2011
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC6984.pdf

Facts: Through this civil revision, the petitioners have assailed judgment and decree passed by the learned District Judge, whereby, the appeal of the respondent was accepted and his suit was decreed.

Issue: Whether non-adherence of Order XLI, Rule 31 of CPC can only be ignored if there has been a substantial compliance of the said provision?

Analysis: Learned counsel for the revision-petitioners stated that the learned Appellate Court fell to an error, while failing to give issue-wise findings. Order XLI, Rule 31 of the Code requires that the written judgment of the Appellate Court to state (a) the points for determination; (b) the decision thereon; (c) the reasons for the decision; and (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled. Undeniably, non-adherence of the said provision can be fatal and the same can only be ignored if there has been a substantial compliance of the provision. Reverting to the judgment assailed before me. The learned Appellate Court recorded the points raised by the two sides and gave findings of facts on the basis of correct appreciation of evidence and law applicable thereupon. The reasonings rendered by the learned Appellate Court are though brief but they are pertinent. I have gone through the entire record very carefully and reached to a firm opinion that the learned Appellate Court has correctly allowed the suit. The contention that the points for determination have not been formulated in a sequential manner or issue-wise finding is not recorded, has lost force since the material questions have already been answered in substantial compliance.

Conclusion: Non-adherence of Order XLI, Rule 31 of CPC can only be ignored if there has been a substantial compliance of the said provision.

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45. **Lahore High Court**
Muhammad Tariq Sahi v Govt. of Punjab and others
Writ Petition No.55800 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC6816.pdf

Facts: The petitioner through this writ petition has assailed the increase in the reserve price of auction of sandstone wherein the Special Experts Committee of Mines and Minerals Department determined the reserve price of sandstone for the bid purposes.

Issues: i) Which of the Government Department has prerogative to fix the reserve price?
ii) How the public authority should exercise jurisdiction while fixing reserve price?
iii) What are parameters to succeed in writ jurisdiction in matters of fixation of reserve price?

Analysis: i) Fixation of reserve price is prerogative of the concerned government department and in this regard, neither any existing lessee nor any prospective bidder can seek fixation of the reserve price of his own choice.
ii) While fixing reserve price, the exercise of discretion by the public authority must be just, fair and reasonable and any arbitrary, whimsical and capricious exercise of such authority is amenable to judicial scrutiny, however, the scope of jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 in that regard is very limited.
iii) To succeed in writ jurisdiction, it is imperative to establish that the reserve price fixed by the public functionaries is so unreasonable that no authority with prudent mind could have fixed the same.

Conclusion: i) Fixation of reserve price is prerogative of the concerned government department.
ii) While fixing reserve price, the exercise of discretion by the public authority must be just, fair and reasonable.
iii) To succeed in writ jurisdiction, it is imperative to establish that the reserve price fixed by the public functionaries is so unreasonable.

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46. **Lahore High Court**
Mst. Sidra-Tul-Muntaha v. Additional Sessions Judge, Lahore etc.
Writ Petition No.84511 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC6888.pdf

Facts: The petitioner has invoked constitutional jurisdiction to challenge the orders passed by the Judge Family Court and the Additional Sessions Judge, respectively whereby her private complaint under section 6(5) of Muslim Family Laws Ordinance, 1961 was entertained to the extent of respondent (her husband) and dismissed to the extent of remaining respondents and the criminal revision preferred there-against was also dismissed.

Issues: i) Whether Court is required to accept the written complaint without evaluating facts and ingredients of the alleged offence?

ii) Whether any attempt, solicitation or conspiracy in relation to polygamy under section 6 of the Muslim Family Laws Ordinance, 1961 is an offence?
iii) Whether section 109 of the PPC for the offence of abetment can be read into and made applicable to broaden scope of the offence prescribed under section 6(5) of the Ordinance, 1961?

Analysis: i) The complaint filed against any accused must state the facts disclosing existence of both the unlawful act and the criminal intent so that the Court may be satisfied regarding existence of every ingredient of the alleged offence. The Court is not required to casually accept the written complaint until it has satisfied itself that prima facie the case has been made out against the persons who have been accused of the criminal offence. In order to arrive at just evaluation, the Court ordinarily examines the complainant and the witnesses as cursory evidence. The purpose behind that practice is to protect the public from false and frivolous complaints filed against them in criminal Courts.
ii) It is pertinent to note that section 6 neither makes the registration of another marriage contracted without permission of the Arbitration Council an offence nor the Ordinance prescribes any inchoate offence in relation to polygamy such as attempt, solicitation or conspiracy. Section 6 of the Ordinance does not prescribe any punishment or penalty against anyone other than the husband who contracts another marriage without permission of the Arbitration Council concerned. It is a cardinal principle of interpretation of criminal statutes that enactments prescribing an offence are to be construed strictly and the words used therein cannot be extended by construction.
iii) For being a special statute, in the absence of any specific provision in the Ordinance permitting applicability of the Pakistan Penal Code, provisions such as section 109 of the PPC for the offence of abetment cannot be read into and made applicable to broaden scope of the offence prescribed under section 6(5) of the Ordinance.

Conclusion: i) The Court is not required to accept the written complaint without evaluating facts and ingredients of the alleged offence.
ii) Any attempt, solicitation or conspiracy in relation to polygamy under section 6 of the Muslim Family Laws Ordinance, 1961 is not an offence.
iii) Section 109 of the PPC for the offence of abetment cannot be read into and made applicable to broaden scope of the offence prescribed under section 6(5) of the Ordinance, 1961.

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47. **Lahore High Court**
Azeem Bakhash Chaudhary v. Returning Officer, Constituency Pp-19 Murree and Kotli Sattian and another
Election Appeal No.147 of 2024
Mr. Justice Mirza Viqas Rauf.
https://sys.lhc.gov.pk/appjudgments/2024LHC87.pdf

Facts: This appeal is filed under Section 63 of the Elections Act, 2017 arising out of an order whereby the Returning Officer proceeded to reject the nomination paper of the appellant on the ground that he is having dual nationality.

Issue: Whether a Pakistani citizen can be declared as disqualified from being elected or chosen as, and from being, a member of the *Majlis-e-Shoora* (Parliament) due to having dual nationality ?

Analysis: In terms of sub-clause (1)(c) of Article 63 of the Constitution of the Islamic Republic of Pakistan, 1973 a person shall be disqualified from being elected or chosen as, and from being, a member of the *Majlis-e-Shoora* (Parliament), if he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State. Section 14 of the Pakistan Citizenship Act, 1951 places an embargo on dual citizenship.

Conclusion: A Pakistani citizen can be declared as disqualified from being elected or chosen as, and from being, a member of the *Majlis-e-Shoora* (Parliament) for having dual nationality.

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48. **Lahore High Court/ Appellate Tribunal**
Emaan Waseem v. Returning Officer
Election Appeal No.16 of 2024
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC36.pdf

Facts: The election appeal originated from rejection of nomination papers for contesting election of National Assembly Seat in accordance with the schedule given by the Election Commission of Pakistan.

Issues: (i) Mere abscondence or being a proclaimed offender would result in rejection of nomination papers/disqualification of a candidate to contest the election.
(ii) Whether the presence of the proposer and seconder before the "R.O." is mandatory as per the mandate of section 62(2) of the Election Act 2017?
(iii) Import of section 62(9) of the Election Act 2017.
(iv) Whether default in payment of Agricultural Income Tax (AIT) would result in rejection of nomination papers/disqualification of a candidate to contest election?

Analysis: (i) It is manifestly clear that mere registration of a criminal case against a candidate or his purported abscondence would not impede as disqualification in his way to contest the election. Reliance was placed with aplomb on 2016 SCMR 733.
(ii) From the whole reading of Section 62, one thing becomes crystal clear that the presence of the proposer and seconder before the "R.O." is not mandatory rather it is optional for them to be present at the time of scrutiny of the nomination papers.
(iii) If there arises a question about the genuineness of the signature of the proposer or the seconder before the "R.O.", he has to conduct a summary enquiry

for his satisfaction. Without holding enquiry the nomination papers ought not to be rejected merely on the ground of absence of proposer and seconder. The "R.O." in the circumstances should employee necessary measures for the production of the proposer and seconder if he was desirous to satisfy himself about the genuineness of their signatures. Moreover in case of a question about genuineness of signatures of a proposer or seconder they are the most relevant persons who can blow the whistle. The question with regard to the genuineness or otherwise of the signatures/handwriting of a person ordinarily cannot be agitated by a third person having no acquaintance with the signature/handwriting of such person.

(iv) Mere default in payment of Agricultural Income Tax (AIT) where neither any assessment was made nor the person was served with any notice to pay the amount in question, which even otherwise was undetermined would not result in rejection of the nomination papers. Reference was made to a larger bench case reported as 2013 CLC 1481.

Conclusion: (i) Mere registration of a criminal case against a candidate or his purported abscondence would not impede as disqualification in his way to contest the election.

(ii) At the time of scrutiny of the nomination papers, presence of the proposer and seconder before the "R.O." is not mandatory.

(iii) See above (analysis part).

(iv) See above (analysis part).

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49. **Lahore High Court**
Imran Ahmed Khan Niazi v. Returning Officer etc.
Election Appeal No.151 of 2024
Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2024LHC76.pdf

Facts: Through the instant election appeal, appellant called in question the legality of order passed by the Returning Officer, whereby his nomination papers were rejected.

Issue: i) Whether power of the Appellate Tribunal is limited only to examine the legality of orders passed by the Returning Officers under Section 62 of the Elections Act, 2017?

ii) Whether Article 63(1)(h) of the Constitution implies that conviction in an offence of moral turpitude with sentence of not less than two years disqualifies a person from being elected as a member of parliament and even to remain as such?

iii) Whether the use of words "dishonesty" and "deceitful" in the judgment which became root cause of disqualification of the appellant has inexorably brought his conviction within the ambit of moral turpitude, attracting the mischief of Article 63(1)(h) of the Constitution?

iv) Whether the Returning Officer is competent to examine the candidature of a

candidate while subjecting his nomination papers to scrutiny on the touchstone of Section 62 of the Elections Act, 2017?

v) Whether after the suspension of sentence, the conviction can be treated to be in the field?

Analysis: i) Though the learned counsel for the appellant during arguments enrouted through the judgment of conviction passed against the appellant and canvassed that it is legally and factually incorrect but being cognizant of jurisdictional limitation, it will be a fallacious approach for this Tribunal to comment upon the merits of that case while exercising altogether a different legal and territorial jurisdiction. This Tribunal is created under Section 63(1) of the Elections Act, 2017 having powers limited only to examine the legality of orders passed by the Returning Officers under Section 62. The term "jurisdiction", stands for the legal authority vested in a court or forum to decide the controversy placed before it and is to be exercised within the legal sphere, in accordance with some express provision of law. Section 63 of the Elections Act, 2017 places a clog upon this Tribunal to decide only the legality of the finding given by the Returning Officer regarding the rejection or acceptance of nomination papers.

ii) It explicitly implies from Article 63(1)(h) of the Constitution that conviction in an offence of moral turpitude with sentence of not less than two years disqualifies a person from being elected as a member of parliament and even to remain as such. A person, even if elected as a member of Parliament can subsequently be de-seated on account of the disqualification mentioned in Article 63(1)(h) of the Constitution.

iii) In the above backdrop, it can well be concluded that in reference to the particular facts of the case, the definition of a moral turpitude is to be assessed in reference to the moral fibers appellant had to demonstrate according to the office of Prime Minister which he held. Likewise, the delinquency attributed to the appellant culminating in the judgment of conviction is to be adjudged in reference to the prospect of lowering his status and the office of Prime Minister. The applicability of moral turpitude is to be gauged in accordance with morals an ordinary citizen is required to demonstrate, besides in consonance with legal requirement pertaining to a parliamentarian and in particular to a Prime Minister for declaration of his assets. For the afore-mentioned purpose, the finding of conviction given against the appellant is to be seen which admittedly is in field even at present…… The use of words "dishonesty" and "deceitful" in the judgment has inexorably brought the conviction of appellant within the ambit of moral turpitude, attracting the mischief of Article 63(1)(h) of the Constitution.

iv) The purpose of filing a declaration under Section 60(2)(a) of the Elections Act, 2017 is aimed at enabling the Returning Officer for giving a finding about the legal competency of a candidate to contest election. I have no scintilla of reluctance to hold that the Returning Officer was legally competent to examine the candidature of appellant while subjecting his nomination papers to scrutiny on the touchstone of Section 62 of the Elections Act, 2017.

v) I have also dilated upon the argument of learned counsel for the appellant that after the suspension of sentence, the conviction of appellant cannot be treated to be in the field. Against the conviction, the appellant filed Criminal Appeal which was accompanied by a petition for suspension of sentence…. From the prayer clause of the petition moved under Section 426 Cr.P.C. and the concluding para of order, it unambiguously emerges that neither any request for suspension of conviction was made nor an order in this regard was passed. Even otherwise, the conviction and sentence are two different terms; the former pertains to the guilty verdict and the latter stands for the rigors which follow from conviction. The conviction means a guilty verdict pronounced by the Court in reference to the delinquency attributed to accused, whereas sentence denotes the quantum of punishment. Section 426 Cr.P.C. is an enabling provision which brings a convict out of the rigors of undergoing the sentence awarded to him but keeps the conviction intact.

Conclusion: i) Power of the Appellate Tribunal is limited only to examine the legality of orders passed by the Returning Officers under Section 62 of the Elections Act, 2017.

ii) Article 63(1)(h) of the Constitution explicitly implies that conviction in an offence of moral turpitude with sentence of not less than two years disqualifies a person from being elected as a member of parliament and even to remain as such.

iii) The use of words "dishonesty" and "deceitful" in the judgment which became root cause of disqualification of the appellant has inexorably brought his conviction within the ambit of moral turpitude, attracting the mischief of Article 63(1)(h) of the Constitution.

iv) The Returning Officer is competent to examine the candidature of a candidate while subjecting his nomination papers to scrutiny on the touchstone of Section 62 of the Elections Act, 2017.

v) After the suspension of sentence, the conviction can be treated to be in the field as Section 426 Cr.P.C., is an enabling provision which brings a convict out of the rigors of undergoing the sentence awarded to him but keeps the conviction intact.

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50. **Lahore High Court**
Yaar Gul Khan v. Returning Officer, PP-138, Sheikhupura and others
E.A. No.697 of 2024
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC52.pdf

Facts: Through the instant appeal order of the Returning Officer has been assailed whereby nomination papers of the appellant were rejected on the basis of some outstanding dues reflected in the record of the FBR.

Issue: Whether the appellant can be granted the opportunity to deposit the outstanding amount stated to be reflected in the record of the FBR against him under protest?

Analysis: In the interest of justice and fairness, since inalienable fundamental rights of the appellant under Article 17(2) of the Islamic Republic of Pakistan, 1973 are involved; an opportunity to pay off the outstanding liability till the resumption of the Court qua hearing of the appeal on the next date was observed.

Conclusion: The appellant can be granted the opportunity to deposit the outstanding amount stated to be reflected in the record of the FBR against him under protest.

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51. **Lahore High Court**
Malik Zaheer Abbas v. Returning Officer and others
E.A. No.217 of 2024
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC47.pdf

Facts: This election appeal assails order of the Returning Officer rejecting the nomination papers of the appellant/candidate.

Issue: Whether production of documents of sale of movable assets and explanation of the candidate that vendee of movable assets failed to get the assets transferred in his name, are sufficient to dispel the presumption of deliberate concealment of assets?

Analysis: The learned counsel for appellant referred to documents brought on record through C.M which include copies of transfer letters & sale/payment receipts qua movable assets and submits that as per section 32(1) of the West Pakistan Motor vehicles Ordinance, 1965 the transferee is obligated to report to the transfer to the registering authority within statutory period which in the instant case is the Excise and Taxation Department, Government Of the Punjab, which if was not done by the respective vendees of the two machines, could not be saddled with harsh consequences upon the bona fide seller of such goods and further that appellant hardly stood to gain anything by any non-disclosure and holding the bona fide belief that they were no longer tagging in his name having duly sold the same for value could not be attributed any malice to attract adverse inference for purposes of consideration of his nomination form over alienated automations of marginal value… The explanation proffered by the appellant to dispel any presumption of deliberate concealment shall suffice for purposes of summary proceedings obligated to ensure that any omissions being detected shall be subjected to proper analysis to reject or accept the same keeping in line principles settled by the superior courts qua hallmarks of structured discretion.

Conclusion: Production of documents of sale of movable assets and explanation of the candidate that vendee of movable assets failed to get the assets transferred in his name, are sufficient to dispel the presumption of deliberate concealment of assets for purposes of summary proceedings.

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52. **Lahore High Court**
Naseer Ahmad Qadri v. Meer Muhammad Nawaz, Returning Officer and another.
Election Appeal No.378 of 2024
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC21.pdf

Facts: This appeal under section 63 of the Elections Act, 2017 is directed against order of the Returning Officer whereby the nomination papers of the appellant were rejected upon finding of fact that in Voter Certificate of the proposer his name was found not to exist on the electoral roll as a registered voter for the said constituency.

Issues: i) Whether delimitation process is a prerogative of Election Commission of Pakistan?
ii) Whether Returning Officer is bound by the entries under section 62(6) of Election Act,2017 and the provisions qua proposer are mandatory in nature?
iii) Whether discretion of curing defects in the nomination papers is limited?

Analysis: i) The delimitation process undoubtedly under the Constitution of the Islamic Republic of Pakistan, 1973 is a prerogative of Election Commission of Pakistan.
ii) The Returning Officer being bound by the entries under section 62(6) of the Election Act,2017 in the electoral roll on scrutiny finding the name of the proposer not to occur on the electoral list for the constituency in exercise of powers under section 62(9)(b) of the Act proceeded to reject the nomination papers. The precedent cited by the learned Legal Advisor in Jamshed Iqbal Cheema v. The Election Appellate Tribunal and 19 others (2022 CLC 463) as well as the Larger Bench Judgment Ijaz v. Returning Officer PP-115, Faisalabad (W.P. No.223502 of 2018) hold to the effect that the provisions qua proposer in the Act are mandatory in nature and any defect in respect thereof in the nomination was a defect of substantial nature and the same could not be cured at a subsequent stage and nomination papers invalid on such account could not be allowed to be validated afterwards in exercise of powers either by the Returning Officer or even by Appellate Tribunal (…)
iii) Discretion of curing defects in the nomination papers is limited to correction of error in name, serial number in the electoral roll or other particulars of the candidate or his proposer or seconder and that the same may be remedied forthwith but specifically holds against substitution of proposer or seconder which is declared to be impermissible (…)

Conclusion: i) Yes, delimitation process is a prerogative of Election Commission of Pakistan as enshrined in the Constitution of the Islamic Republic of Pakistan, 1973.
ii) Yes, Returning Officer is bound by the entries under section 62(6) of Election Act, 2017 and the provisions qua proposer are mandatory in nature.
iii) Yes, discretion of curing defects in the nomination papers is limited.

53. **Lahore High Court**
Jan Muhammad Ramzan v. Returning Officer and another
Election Appeal No.1105 of 2024
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC28.pdf

Facts: This appeal under section 63 of the Elections Act, 2017 assails order of the Returning Officer whereby the nomination papers of the appellant as a candidate were rejected, that in the declaration of appellant's nomination papers no particulars of bank account have been provided for purposes of documenting election expenses.

Issue: Whether the deficiency related to the non-mentioning of an account in the declaration of appellant's nomination papers for purposes of documenting election expenses can be rectified?

Analysis: The primary basis of opening such an account as given at section 134 of the Elections Act, 2017 is to account for election expenses as certain ceiling of expenses has to be maintained by the candidates in conducting their campaign and making expenses related to the elections. Mere non-mentioning of the account in the form appears to be a deficiency which could have been rectified by entering the detail of the account in the relevant column by the Returning Officer on appellant being given an opportunity.

Conclusion: Non-mentioning of the account in the form appears to be a deficiency which could have been rectified by entering the detail of the account in the relevant column by the Returning Officer on appellant being given an opportunity.

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54. **Lahore High Court**
Wajid ur Rehman v. Election Commission of Pakistan etc.
Election Appeal No.150 of 2024
Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2024LHC12.pdf

Facts: The appeal in hand is aimed at calling in question the legality of order passed by the Returning Officer, whereby the nomination papers of appellant were rejected.

Issues: i) What would be fate of nomination papers of an election candidate holding dual nationality, if his request for relinquishment of foreign nationality is still pending decision?
ii) What is the primary duty of Returning Officer at the time of scrutiny, under Section 62 of the Election Act, 2017, with regard to a person who by law is not eligible to contest elections?

Analysis: i) For contesting election, a candidate has to submit his nomination papers in accordance with the requirement of Section 60 of the Election Act, 2017 while the detail of documents forming part of the nomination papers is mentioned in

Section 60 (2) of the Act ibid, which includes a Declaration by the candidate that he fulfills the qualification specified in Article 62 of the Constitution of Islamic Republic of Pakistan, 1973 and does not come within the disqualification enumerated in Article 63 of the Constitution of Islamic Republic of Pakistan, 1973. According to Article 63(1)(c) of the Constitution of Islamic Republic of Pakistan, 1973, a person is held disqualified from being elected or chosen as member of parliament if he ceases to be a citizen of Pakistan or acquires the citizenship of a foreign State.

ii) This is the primary duty of Returning Officer to ensure that no person who by law is not eligible to contest elections be ousted from the electoral process at the very initial stage of scrutiny under Section 62 of the Election Act, 2017. While scrutinizing the nomination papers the Returning Officer must make a just, fair and unbiased assessment about the credentials of the candidate for making decision that he is qualified or not to contest the elections.

Conclusion: i) In case the request for relinquishment of foreign nationality of an election candidate holding dual nationality is still pending decision, his nomination papers would be hit by the impediment contained in Article 63(1)(c) of the Constitution of Islamic Republic of Pakistan, 1973.

ii) The primary duty of Returning Officer is to ensure that a person who by law is ineligible to contest elections should be ousted from the electoral process at the stage of scrutiny under Section 62 of the Election Act, 2017.

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55. **Lahore High Court**
Imran Ahmed Khan Niazi v. The Returning Officer and another.
Election Appeal No. 831 of 2024
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2024LHC100.pdf

Facts: Through this election appeal filed in terms of section 63 of the Elections Act, 2017, the appellant has called in question the vires of order, penned down by the Returning Officer of constituency, whereby nomination papers filed by the appellant were rejected.

Issues: i) What is meant by the words judgement in rem and personam?

ii) What is the meaning of the term "Moral Turpitude"?

iii)What is the difference between two phrases i.e. Conviction and Sentence?

iv) Whether the suspension of sentence under section 426 Cr.P.C and suspension of conviction are poles apart and mere pendency of an appeal does automatically nullify the conviction?

Analysis: i) The word judgement in rem and personam has not been specifically defined in the Qanun-e-Shahadat Order, 1984. The word rem or personam has not been used in Article 55 of the Order, however, the term is defined in Black's Law Dictionary…The word judgement in rem and judgement in personam has remained subject of discussion of the courts from time to time. The first

authoritative judgement in this regard was delivered by the Supreme Court of Pakistan in case-law titled as “Pir Bakhsh represented by his legal heirs and others v. The Chairman, Allotment Committee and others” (PLD 1987 SC 145). Subsequently, this judgement has been followed by the august court in another reported case “Muhammad Sohail and 2 others v. Government of N.W.F.P. and others” (1996 SCMR 218). The Supreme Court of Pakistan while discussing the present two concepts in detail has observed…After perusing Article 55 of the Qanun-e-Shahadat Order, 1984, and considering the preceding discussion, it becomes evident that the said article comprises of two parts. The first part renders the final judgment, order, or decree of a competent court in the exercise of probate, matrimonial, admiralty, or insolvency jurisdiction relevant. The second part establishes the judgment as conclusive proof only in these specific matters. The judgement of the competent court can be considered conclusive only when it declares a legal character which it confers or takes away, accrued or ceased at the time of declaration in the judgement for that purpose. The judgement must be delivered by the competent court having jurisdiction on subject matter. The said judgment is susceptible to challenge only on grounds specified in Article 58 of the Order ibid and not otherwise. The judgement in rem is conclusive against the word as to the status of the rest whereas judgement in personam is conclusive only between parties or privies(…)

ii) An action can be considered "moral turpitude" if it violates a person's moral fiber, diminishes his moral standards, or involves an act of inherent baseness in fulfilling one's private, social, or public obligations to one's fellow citizens, society, country, institutions, and government…

iii)A Conviction refers to the outcome of a criminal trial. It is the act of proving or declaring a person guilty of a crime whereas a Sentence, on the other hand, is the formal declaration by a court imposing a punishment on the person convicted of a crime. A Conviction is a result of the verdict of a judge and/or jury. In contrast, a Sentence is typically ordered by a judge. The court cannot order a Sentence unless the person has been found guilty or convicted. Therefore, a Conviction must precede a Sentence. The term Conviction is traditionally defined as the outcome of a criminal prosecution that culminates in a judgment that the defendant is guilty of the crime charged but traditionally, the term Sentence is defined as the judicial determination and pronouncement of a punishment to be imposed on a person convicted of a crime. When we hear the term Sentence, particularly in a legal context, we automatically think of a prison or jail sentence. Dictionaries define the term Conviction as the state of being found or proven guilty or the act of proving or declaring a person guilty of a crime. Convictions are associated with criminal proceedings, as opposed to civil proceedings. The ultimate goal of the prosecution is to secure a Conviction by proving beyond reasonable doubt that the defendant committed the crime and this is not incorrect as a Sentence may include punishment in the form of incarceration (…)

iv) The spirit of criminal jurisprudence clearly sounds that the suspension of sentence under section 426 Cr.P.C and suspension of conviction are poles apart.

In this behalf, it would be worth to mention here that conviction attains finality upon the determination of guilt by a Court of competent jurisdiction. During the pendency of an appeal, the appellate court, pursuant to section 426 Cr.P.C. may suspend the execution of the appellant's sentence. It is imperious to note that the suspension pertains solely to the sentence and not the conviction, which remains operative until set aside by higher appellate courts. The mere pendency of an appeal does not automatically nullify the conviction. Section 426 Cr.P.C does not empower the appellate court to suspend the conviction; rather, it is a discretionary measure extended to the accused. Therefore, the suspension of sentence does not imply the expungement of the underlying conviction. Thus suspension of the sentence imposed on the appellant would not affect the completed conviction, which arises upon the determination of guilt by a court of competent jurisdiction and that conviction still hold the field

Conclusion: i) The judgement in rem is conclusive against the word as to the status of the rest whereas judgement in personam is conclusive only between parties or privies.
ii) Act of violations of a person's moral fiber, diminishes his moral standards, or involves an act of inherent baseness in fulfilling one's private, social, or public obligations to one's fellow citizens, society, country, institutions, and government is called moral turpitude.
iii) See above in analysis portion.
iv) According to criminal jurisprudence the suspension of sentence under section 426 Cr.P.C and suspension of conviction are poles apart and mere pendency of an appeal does not automatically nullify the conviction.

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56. **Lahore High Court/ Appellate Tribunal**
Raja Safeer Akbar v Returning Officer
Election Appeals No.29 & 30 of 2024
Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2024LHC17.pdf

Facts: The election appeal originated from rejection of nomination papers from two different constituencies for contesting election of National Assembly and Provincial Assembly in accordance with the schedule given by the Election Commission of Pakistan.

Issues: (i) Whether section 62 of the Election Act 2017 requires signing of nomination papers, submission of sworn affidavit and appearance before the Returning Officer for affixing sign or verification by a lawful attorney or by the candidate in person?
(ii) Scope of power of Returning Officer.
(iii) Import of Section 60(3) of the Election Act 2017.

Analysis: (i) The language of section 60(2) ibid is explicit in sense and leaves no room for discussion that the nomination papers (Form-A) and declarations are required to

be submitted in terms of clause (a) and (b) of the foregoing provision ought to be signed by none other than the candidate himself. From the use of word shall in section 60(2) it can be gathered that requirement of signing the nomination papers and declarations by the contestant is mandatory in nature and cannot be relaxed.

(ii) The power of Returning Officer to reject the nomination papers are embedded in Section 62 (9) of the Election Act, 2017. According to Section 62(9)(c) of the Election Act, 2017, the nomination papers can be rejected if filed without adhering to the provisions of section 60 and 61.

(iii) The authorization in favour of an advocate is restricted only to the extent of submission of nomination papers and cannot be stretched to an extent of permitting a person other than the candidate to sign the document required to be submitted in terms of sub-section 2 of section 60.

Conclusion: (i) Signing of the nomination papers and declarations by the contestant in person is mandatory in nature.
(ii) See above (analysis part).
(iii) See above (analysis part).

LATEST LEGISLATION / AMENDMENTS

1. Amendments in the Punjab Government Rules of Business, 2011 in the First Schedule at Sr. No 20 in column 4 under the heading Autonomous Bodies & Companies and in the second schedule under the heading INDUSTRIES, COMMERCE, INVESTMENT AND SKILL DEVELOPMENT DEPARTMENT at Sr. No. 23.
2. Amendments in the Pakistan Prison Rules, 1978 in Rules 797,807,809,975,994 and insertion of chapter 44-A under the heading District Prison Health Council with Rules 1109-A, 1109-B, 1109-C, 1109-D and 1109-E.
3. Amendment in the Punjab Government Rules of Business, 2011 in the First Schedule at Sr. No. 9 in column 2 and in second schedule for the heading ENVIRONMENT PROTECTION & CLIMATE CHANGE DEPARTMENT.
4. Amendment in the Punjab Katchi Abadis (Service) Rules, 2016 in the Schedule at Sr.No.7, in column Nos. 1 to 10 for the post of Superintendent (BS-17) at Sr. No. 9, in column no.3 for the post of Stenographer (BS-14) & at Sr. No. 11 in column No. 3 for the post of Accountant (BS-12).
5. Amendment in the Punjab Secretariat (Ministerial Posts) Service Rules, 1982 in the Schedule at Sr. No .11, column no. 10 for the Post of Junior Clerk (BS-11).
6. Amendment in the Punjab Forest Department (Executive, Sericulture, Research and Extension, Technical and Ministerial Posts) Recruitment Rules, 2019 in the Schedule at Sr.No.1 for the post of Chief Conservator of Forests (BS-20).

7. Amendments in the Punjab Energy Department (Power Wing) Service Rules, 2013 in the Schedule at Sr.No.2 in column no. 7 for the post of Director Technical (BS-19), at Sr. No. 24, 25,25a,26,27,28,29,30 & 31 in column no. 4 & at Sr. No. 31 in column no.1 to 10.
8. Amendment in the Punjab Forest Department (Executive, Sericulture, Research and Extension, Technical and Ministerial Posts) Recruitment Rules, 2019 in the Schedule under the heading 1. Forestry Executive.
9. Insertion of sections 3A, 22A; Substitution of sections 4, 8 and amendment of section 7 in the Pakistan Broadcasting Corporation Act, 1973.
10. Amendment of sections 2,3,17, 22; Substitution of sections 14,18,19,20,23,40 and addition of THIRD SHEDULE in the Pakistan National Shipping Corporation Ordinance,1979.
11. Amendment of sections 2, 3; Insertion of section 3A and substitution of section 28 in the Pakistan Postal Services Management Board Ordinance, 2002.
12. Amendments of sections 2, 3, 4, 5, 6, 7, 9, 10, 11, 15, 16 and substitution of sections 8, 33 in the National Highway Authority Act, 1991.
13. Amendment in section 462O of the Pakistan Penal Code, 1860.
14. Substitution of sections 28, 29; Omission of sections 30, 33 and amendments of sections 31, 32 in the Privatization Commission Ordinance, 2000.

SELECTED ARTICLES

1. MANUPATRA

https://articles.manupatra.com/article-details/Predatory-Lending-practices-examining-Excessive-Interest-Rates-Extended-Loan-periods-and-tracing-relief-for-the-Borrowers

Predatory Lending practices: examining Excessive Interest Rates, Extended Loan periods, and tracing relief for the Borrowers by Harman Bir Singh Juneja AND Amrit Kaur

The cardinal function of banking institutions includes the administration of credit facility to their customers. Nonetheless, there exists an aversion among the general public in relation to this primary function of the banking institutions. This is because of the unlawful practices of abovesaid institutions that they regularly comes across in their daily lives. More often than not the most prevalent illegal practice is the arbitrary increment of the interest rates of the loans and the extension of the loan periods, thus charging exorbitant amounts from the borrowers in the name of changing repo-rate, internal policies of the institution and what not. The people however are either ignorant of such malpractices or are uninformed about the possible reliefs available to them. The authors of this article nowhere disagree with the possibility of the increase in interest rate or the extension of loan period and the like by the banking institutions because of sufficient and reasonable causes at their end. The article only tries to bring forward the predatory practices of some of the institutions being actually at fault, trying to bring forward to the public fora, the existence of the stern provisions and safeguards in place to prevent such practices as prescribed by the Reserve Bank of India and the judicatories.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/TRANSFER-OF-CASES-UNDER-THE-CODE-OF-CIVIL-PROCEDURE-1908

Transfer of Cases Under the Code of Civil Procedure 1908 by Aadrika Goel

The court must maintain impartiality when dealing with parties involved in a dispute. Therefore, when a plaintiff initiates a lawsuit in their preferred location, as outlined in the "Code of Civil Procedure 1908"[1], the defendant is required to appear before the court and submit a written statement, presenting objections to the plaintiff's suit. If the defendant raises concerns related to the court's jurisdiction based on provisions within the Code of Civil Procedure, the court must initially address the jurisdictional issue. If the court determines that it lacks jurisdiction, it is obligated to transfer the lawsuit, following the guidelines. Nevertheless, if either party encounters difficulties at any point during the legal proceedings and wishes to relocate the case to a different place or court of their choice, they have the remedy to file a transfer petition in the relevant court in accordance with such applicable law.

3. **THE NATIONAL LAW REVIEW**
https://www.natlawreview.com/article/meeting-new-challenges-environmental-energy-and-esg-issues-watch-2024

Meeting New Challenges: Environmental, Energy, and ESG Issues to Watch in 2024 by J. Michael Showalter , Francis X. Lyons , Amy Antoniolli , David M. Loring , Bina Joshi and Malerie Ma Roddy of ArentFox Schiff LLP

The regulated community faces a complex and evolving landscape. As we head into 2024, our team of energy, environmental, and environmental, social, and governance (ESG) attorneys provide insights and guidance on how to navigate the changing environment. While these challenges may not be new, their significance continues to grow. We recently released our 2023 "Top 10" lists for Environmental & Energy and ESG, outlining the biggest challenges we encountered last year. Below, we summarize nine issues likely to surface as we head into 2024.

4. **THE NATIONAL LAW REVIEW**
https://www.natlawreview.com/article/ftc-sends-stern-reminder-ai-companies

FTC Sends Stern Reminder to AI Companies by Julia K. Kadish of Sheppard, Mullin, Richter & Hampton LLP

While the US does not have some specific AI-focused law a host of regulators have been providing their thoughts about AI. Noticeable traction on the topic began in 2020. With the explosion of Chat GPT in 2023, commentary (and scrutiny) has been picking up steam. Unsurprisingly, the FTC is in the mix sharing its thoughts through various blogs and investigations. Its blogs have focused on specific aspects of AI – use of AI, claims about AI, voice cloning, and now, companies that develop AI. In its latest guidance, the FTC reminds companies that develop AI models of their obligations around privacy commitments made to their users and customers. The take-aways and underlying points in this post are not new. The FTC has long reminded (and enforced) companies that the statements made about how information will be collected, used, shared, protected, etc.

must be upheld. That said, this guidance puts those concepts into the context of a growing area of companies – model-as-a-service companies.

5. THE OXFORD ACADEMIC
https://academic.oup.com/ejil/advance-article-abstract/doi/10.1093/ejil/chad059/7473376?redirectedFrom=fulltext

After TWAIL's Success, What Next? Afterword to the Foreword by Antony Anghie

In the span of two decades, Third World approaches to international law (TWAIL) experienced a meteoric rise, becoming not only one of the most interesting but also one of the dominant approaches to international law. This Afterword to the Foreword by Antony Anghie reflects upon the rise of TWAIL and its significance to the discipline of international law. I argue that having become part of the disciplinary mainstream, TWAIL 'civilizes' international law, making it more difficult for international lawyers to ignore or dismiss the colonial origins and legacies of their field. As TWAIL leaves a mark on international law, new spaces for international legal action by the peoples of the global South might have been opened. Does greater action weaken TWAIL's central insights about colonial origins and legacies? Maybe, and if so, a mainstream TWAIL opens also disciplinary space for other critical approaches that shine light on Third World experiences of international law that point not just to oppression but also to North/South engagement and, potentially, Southern resistance.

6. THE OXFORD ACADEMIC
https://academic.oup.com/ejil/advance-article-abstract/doi/10.1093/ejil/chad058/7463990?redirectedFrom=fulltext

The Third World and the Quest for Reparations: Afterword to the Foreword by Antony Anghie

In his Foreword, Antony Anghie contrasts two systems of reparations: the Third World system, which is about reparations for colonial expropriation and disenfranchisement, and the Western system, according to which, in the context of decolonization, newly independent states were allowed to expropriate foreign corporations only in return for full compensation. While the Western system has been firmly anchored in international law through the law of aliens and – later – investment law, the Third World system still meets with resistance in international legal discourse. Convinced that international law should be instrumental in overcoming its own colonial origins, I attempt in the following article to explore possible legal foundations by countering the main arguments raised against demands for reparations from the global South: their disruptive effects on today's societies, conceptual and technical legal obstacles, as well as the doctrine of non-retroactivity of the law. Not being a TWAIL scholar myself, I hope that this might serve as a constructive contribution to a common cause.

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-01-2024 to 31-01-2024)

A Summary of Latest Judgments Delivered by the Supreme Court of Pakistan & Lahore High Court, Legislation/Amendment in Legislation and important Articles

Prepared & Published by the Research Centre Lahore High Court

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
National Logistics Cell, Government of Pakistan, HQ NLC, Karachi v. The Collector of Customs, Model Customs Collectorate, Port Muhammad Bin Qasim, Karachi, etc.
Suo Moto Case No.16/2010 & Civil Petition Nos. 1600 to 2807 of 2021
Mr. Justice Umer Ata Bandial, HCJ, Mr. Justice Yahya Afridi, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1600_2021_dt_25_01_2024.pdf

Facts: Through these civil petitions the petitioner seeks leave to appeal against a single consolidated order, whereby the High Court has dismissed the Special Custom Reference Applications filed by the Petitioner under section 196 of the Customs Act, 1969. The genesis of the cases in hand was a news report, which was made the basis for Suo Motu proceedings initiated by this Court, under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 to inquire into the alleged pilferage of commercial and non-commercial cargos meant for transportation to Afghanistan for ISAF and NATO forces under the Afghan Transit Trade Agreement, 1965.

Issues: i) Whether scope and extent of the jurisdiction of Supreme Court and High Court is limited to interfere while deciding question of law, which may arise from the order passed by the Appellate Tribunal under various tax statutes?
ii) Whether decision of Appellate Tribunal based upon erroneous finding of fact can be corrected by the High Court?
iii) Whether Supreme Court may exercise the jurisdiction that is vested in the High Court in order to correct the perverse or arbitrary findings of fact?
iv) What is the extent of exception to the general rule of not interfering with the findings of fact, recorded by the Appellate Tribunal?
v) Whether Supreme Court while invoking the exception of interference in findings of fact, recorded by the Appellate Tribunal, can accept the additional material produced before it for the first time?
vi) Whether efficacy of the exercise of the Suo Motu jurisdiction vested in Supreme Court under Article 184(3) of the Constitution can be disputed?

Analysis: i) Generally, it is for the Appellate Tribunal, being the last fact-finding adjudicator, to finally determine the factual aspects of the controversy, and such findings are not interfered with by the High Court, while exercising its jurisdiction under various tax statutes; as the scope and extent of the power of the High Court hearing matters under the tax statutes in reference jurisdiction, as well as of this Court hearing appeals against decisions of the High Court made in such reference jurisdiction, is limited to deciding the question(s) of law, which may arise from the order passed by the Appellate Tribunal.
ii) Where the Appellate Tribunal has based its decision on some perverse or totally incorrect finding of fact, which is contrary to the material available on

record or which is based on surmises and conjectures; the decision based on such erroneous finding of fact can be corrected by the High Court.

iii) In cases, where the High Court has relied on the findings of the Appellate Tribunal, without a proper appraisal of the material before it, this Court being the appellate court of the High Court, may positively exercise the jurisdiction that is vested in the High Court but having not been exercised by it, in order to correct the perverse or arbitrary findings of fact.

iv) The exception to the general rule of not interfering with the findings of fact, recorded by the Appellate Tribunal, is by no means to be exercised in order to facilitate a delinquent party, with a chance to fill up the lacunas in his case. Thus, this exception is not meant for allowing the additional material, particularly in circumstances, where in the grounds of appeal, a case for additional evidence has not been set out, or any independent formal application has been moved for the purposes of producing additional evidence (…)

v)The Supreme Court can invoke the exception and accept the additional material produced before it for the first time, provided that: firstly, it is relevant to resolving the controversy in the case; and that the additional material proposed to be adduced was neither in the possession nor knowledge of the party seeking to produce the same in evidence; and finally, that the party proposing to introduce that additional material in the evidence has been prompt in seeking its production without any delay… Once this Court finds it just and proper to consider the additional material, it would then have to decide; whether it is to pass a finding thereon or refer the matter to a lower forum (...)

vi) None can dispute the efficacy of the exercise of the Suo Motu jurisdiction vested in this Court under Article 184(3) of the Constitution, in matters of public importance involving enforcement of any of the fundamental rights, which require urgent attention of the Court to ensure that the rule of law in the country prevails. However, the exercise of this jurisdiction by the Court is intended to be the need of the hour to ensure and enforce the rule of law; and not to undermine the lawful authority of the departments, institutions, authorities or offices. Not to mention the prejudice it may cause the parties who would not have any right of appeal against the orders passed by this Court in its Suo Moto jurisdiction and the adverse effect it may have on the adjudicatory process that may ensue.

Conclusion: i) Yes, scope and extent of the jurisdiction of Supreme Court and High Court is limited to interfere generally while deciding question of law, which may arise from the order passed by the Appellate Tribunal under various tax statutes.

ii) Yes, decision of Appellate Tribunal based upon erroneous finding of fact can be corrected by the High Court.

iii) Yes, Supreme Court may exercise the jurisdiction that is vested in the High Court in order to correct the perverse or arbitrary findings of fact.

iv) See above in analysis No. (iv).

v)Yes, Supreme Court while invoking the exception of interference in findings of fact, recorded by the Appellate Tribunal, can accept the additional material

produced before it for the first time.
vi) The efficacy of the exercise of the Suo Motu jurisdiction vested in Supreme Court under Article 184(3) of the Constitution cannot be disputed.

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2. **Supreme Court of Pakistan**
All Pakistan Muslim League thr. its Chairman Jahan Zarin v. Election Commission of Pakistan through Chief Election Commissioner, Islamabad
C.M.A.10566/2023 in C.A.NIL/2023
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Muhammad Ali Mazhar, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._10566_2023.pdf

Facts: This appeal is filed under section 202(6) of the Elections Act, 2017 impugning the order of the Election Commission of Pakistan whereby All Pakistan Muslim League (APML), a political party was delisted and the applications for allocation of symbol submitted by unauthorized and self-styled office bearers were rejected due to non-fulfillment of the criteria laid down in Article 17(3) of the Constitution of Pakistan read with section, 202, 209 and 210 of the Election Act 2017.

Issue: Whether a political party is under obligation to provide valid statements of accounts and fulfill the requirement of section 209 and 210 of the Act of 2017?

Analysis: The order of the ECP assailed before us concludes as under: '25. In view of the above discussion and scanning of record, the Commission holds and decides that there are no elected office bearers of APML, therefore, the party is virtually non-existent. Due to non-existence of the elected office bearers in accordance with the party constitution and the provisions of the Act of 2017, the party has been unable to provide valid consolidated statements of accounts of last Four (4) years which is requirement of the Article 17(3) of the Constitution read with Section 210 of the Act of 2017. The APML has failed to fulfill the requirement of section 209 and 210 of the Act of 2017 which is one of the pre-requisite for enlistment of a political party in terms of section 202. In exercise of powers conferred upon under Article 218(3) read with section 202(5) of the Act ibid, APML, as a political party is hereby delisted and the applications for allocation of symbol submitted by unauthorized and self styled office bearers are rejected. Resultantly the symbol Eagle becomes available for allocation in accordance with law.'… Learned counsel was asked whether the statements of accounts, which were required by the ECP, were provided but he could not refer to a single document in this regard; further establishing that the requisite statements were not provided to the ECP. Learned counsel was repeatedly asked to show us any illegality or unconstitutionality in the impugned order of the ECP dated 19 September 2023 but was unable to do so and there is no justification to set it aside.

Conclusion: A political party is under obligation to provide valid statements of accounts which is requirement of the Article 17(3) of the Constitution read with Section 210 of

the Act of 2017 and fulfill the requirement of section 209 and 210 of the Act of 2017.

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3. **Supreme Court of Pakistan**
The Election Commission of Pakistan through its Secretary and others v. Pakistan Tehreek-e-Insaf through its authorized person and others
Civil Petition No. 42 of 2024
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Muhammad Ali Mazhar , Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.p._42_2024_25012024.pdf

Facts: Through this petition, the petitioner challenged the judgment of the Peshawar High Court passed in Writ Petition. The said petition had challenged the order passed by the Election Commission of Pakistan ('ECP') in which he Election Commission of Pakistan decided the complaints received from fourteen complainants and the objections of the 'Political Finance Wing' of the ECP with regard to the intra-party elections of the Pakistan-Tehreek-e-Insaf ('PTI').

Issues: i) Can a party file the same case in two courts simultaneously?
ii) What will be the effect if intra-party elections are not held in a political party?
iii) Whether any challenge has been thrown to the Elections Act or with regard to any of its provisions?
iv) Whether the amendments in the Representation of the People Act, 1976 had disabled political parties from obtaining a common election symbol for their candidates?

Analysis: i) A party cannot simultaneously agitate the same matter before two courts. Section 10 of the Code of Civil Procedure, 1908 prohibits this; it stipulates that cases 'in which the matter in issue is also directly and substantially in issue in a previously instituted' case, the court in which the subsequent case is filed shall not proceed therewith. The rule of law and judicial process would be seriously undermined if a party simultaneously agitates the same matter before two different High Courts. This may also result in conflicting decisions.
(ii) If intra-party elections are not held in a political party it severs its relationship with its members, and renders a party a mere name without meaning or substance… The Fundamental Right enshrined in Article 17(2) of the Constitution secures the right to form political parties. If members of political parties are not allowed to participate in intra-party elections, their Fundamental Right of putting themselves forward as candidates, contesting elections and voting for the candidates of their choice is violated.
iii) The laws of Pakistan enacted by Parliament must be abided by, including by Judges of the superior courts, whose oath of office also requires adherence therewith. Unless a law, or any provision thereof, is challenged and is found to contravene the Constitution and declared unconstitutional, it must be given effect to. The Elections Act became law on 2 October 2017 and during the last six years

no successful challenge has been thrown to it or with regard to any of its provisions.
iv) Section 21(1)(b) of the Representation of the People Act, 1976 ('ROPA') had been amended through Ordinances No. II and VIII of 1985, promulgated by General Muhammad Zia-ul-Haq, which amendments had disabled political parties from obtaining a common election symbol for their candidates, which meant that general elections would be on non-party basis.

Conclusion: i) A party cannot simultaneously agitate the same matter before two courts.
ii) If intra-party elections are not held in a political party it severs its relationship with its members, and renders a party a mere name without meaning or substance.
iii) The Elections Act became law on 2 October 2017 and during the last six years no successful challenge has been thrown to it or with regard to any of its provisions.
iv) See above in analysis No. (iv).

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4. **Supreme Court of Pakistan**
Kashif v. Imran and another.
Criminal Petition No.188-P of 2023
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Muhammad Ali Mazhar, Ms. Justice Mussarat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._188_p_2023.pdf

Facts: Through this criminal petition the petitioner sought post arrest bail in case FIR registered against him allegedly for committing dacoity in the complainant's house.

Issues: i) Whether the request of complainant can be accommodated in bail matters where sufficient notice has been given and accused was in jail?
ii) Whether non-disclosure of description of the accused in FIR makes the case one of the further inquiry in bail matters?

Analysis: i) In bail matter where the accused is in Jail and sufficient notice has been given, the complainant's request for adjournment cannot be accommodated (...)
ii) The FIR states that three sub-machine guns (SMGs)/7.62 bore weapons and one 9 mm pistol, gold ornaments and mobile phones were stolen when the dacoity was committed. In view of the fact that the description of the petitioner was not mentioned in the FIR, this brings into question the identification parade. And none of the stolen goods were recovered from the petitioner which makes this case one of further inquiry (...)

Conclusion: i) The request of complainant cannot be accommodated in bail matters where sufficient notice has been given and accused was in jail.
ii) Yes, non-disclosure of description of the accused in FIR makes the case one of the further inquiry in bail matters.

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5. **Supreme Court of Pakistan**
Amanullah v. Muhammad Shareef Khan
Civil Appeal No. 179 of 2016
Mr. Justice Ijaz ul Ahsan, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._179_2016.pdf

Facts: The appellant being pre-emptor filed a civil suit against the respondent which was decreed by the trial court but dismissed by the first appellate court on the ground that the notice of *talb-e-ishhad* was on a printed specimen. The appellant filed civil revision before Peshawar High Court which was also dismissed. The appellant challenged the said judgment of the High Court.

Issue: Whether a notice of *talb-e-ishhad* tendered on a printed specimen/form, with the blank columns filled in by a petition writer, is valid?

Analysis: The requirement of sending a notice of *talb-e-ishhad* for confirming the intention to assert the right of pre-emption is imperative and is, essentially, a foundation stone without which no right of pre-emption can be asserted, therefore it commands a great deal of seriousness, attention, and focus. In this case, admittedly, the notice was tendered on a printed form containing stereotyped and generalized text with different columns for land, house, and shops, allowing the pre-emptor or petition writer, as the case may be, to simply erase/cut out the inapplicable terms and fill in the blanks. In our view, this ready-made format does not fulfill the purpose of a statutory notice and this court cannot countenance the use of such *pro formas* which every pre-emptor can simply purchase from a vendor, shop/stall, or petition writer who, for his own convenience, got the template for the notice printed in advance and utilizes stereotyped text in all cases by simply filling in the blank spaces for the pre-emptor to sign and send. Such a notice does not provide any classification of the pre-emptory rights and fails to convey a confirmation of the intention to press the demand of pre-emption. The purpose of a notice under the law is to convey all the necessary particulars, specifically and with a proper application of mind, on a case to case basis, in a customized/personalized form, or in the vein of a tailor-made notice rather than a ready-made notice in which the mixing or merging of irrelevant or general text with the relevant information cannot be avoided. Therefore, a notice on a printed *pro forma* cannot be considered a valid notice in accordance with the tenets and dictates of the law and the same should be drafted especially and individually for each particular case on its own facts and circumstances. The notice should not be a published template of the petition writer who was either not capable of drafting a custom- made or customized notice or, due to sluggishness or laziness, wrongly advised the appellant to send notice in the template form. In this regard the appellant is also equally responsible for depending solely on the petition writer.

Conclusion: A notice of *talb-e-ishhad* tendered on a printed specimen/form, with the blank columns filled in by a petition writer, is invalid.

6. **Supreme Court of Pakistan**
Mst. Nazeeran and others v. Ali Bux and others
Civil Appeal No.81-K of 2022
Mr. Justice Ijaz ul Ahsan, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._81_k_2022.pdf

Facts: The appellant filed an appeal under Article 185(2)(d) of the Constitution of the Islamic Republic of Pakistan, 1973 against the judgment of the High Court of Sindh, whereby a Civil Revision filed by the respondents under section 115 of the Code of Civil Procedure, 1908 was allowed and the judgment and decree passed by the trial court decreeing the suit of the respondents were upheld.

Issues: i) Whether the standard of evidence is uniform when challenging a registered document as compared to challenging an unregistered document?
ii) Whether a *de facto* guardian of a minor has any power to transfer any right to or interest in the immovable property of the minor?

Analysis: i) The standard of evidence required to discharge the initial burden depends on the facts and circumstances of each case. It cannot be said that it will be consistent in all situations. Sometimes, a simple denial is adequate to shift the burden to the opposite party, while at other times, material evidence is necessary for the same purpose. Therefore, the standard of evidence is not uniform when challenging a registered document as compared to challenging an unregistered document. It has been observed that in disputes relating to registered documents, a common misconception may arise when an executant attempts to dispute the validity of the document through mere denial. It is essential to emphasize that the act of registration is not a perfunctory formality but rather a deliberate and legally binding process. When a document is registered, it becomes an official record available to the public. This adds credibility to the authenticity and legal purpose of the transaction. On the other hand, unregistered documents lack the same level of legal endorsement. While they may carry evidentiary weight, their value is inherently lessor as compared to the registered document. The absence of registration renders unregistered documents vulnerable to challenges regarding their authenticity and enforceability. Moreover, a document duly registered by the Registration Authority in accordance with the law becomes a legal document that carries a presumption as to the genuineness and correctness under Articles 85(5) and 129(e) of the Q.S.O. and which cannot be dispelled by an oral assertion that isinsufficient to rebut the said presumption… a mere denial by the executant of a registered sale deed is insufficient to shift the burden onto the beneficiary of the registered document. He (executant) must establish his assertion of fraud or forgery, etc. by producing some evidence other than his denial to shift the burden onto the beneficiary to prove the valid execution of the registered document. This legal principle reflects the recognition of the high evidentiary value attached to registered documents as compared to unregistereddocuments.

ii) Under section 11 of the Contract Act 1872, a contract made by a minor is of no legal effect. Moreover, it is a well-established principle of Muslim Law that a *de facto* guardian of a minor has no power to transfer any right to or interest in the immovable property of the minor.Such a transfer is not merely voidable but is void… No rights and liabilities could be attached to or arise out of a void contract. Even the principle of estoppel is also inapplicable in the case of a minor...Thus, a void contract is entirely void, as if a part of it has no effect, the other part cannot stand by itself and be operative.

Conclusion: i) The standard of evidence is not uniform when challenging a registered document as compared to challenging an unregistered document.
ii) A *de facto* guardian of a minor has no power to transfer any right to or interest in the immovable property of the minor.

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7. **Supreme Court of Pakistan**
Duniya Gul and another v. Niaz Muhammad and others
Civil Petition No.920-P of 2023
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._920_p_2023.pdf

Facts: Through this petition, filed under Article 185(3) of the Constitution, the petitioners have impugned the judgment of the Peshawar High Court, Peshawar whereby their first appeal was dismissed and the order of the trial court, closing their right to produce oral evidence, was upheld.

Issue: What course court should adopt when the last opportunity to produce evidence is granted and the party has been duly warned of the consequences?

Analysis: It is relevant to observe here that when the last opportunity to produce evidence is granted and the party has been duly warned of the consequences, the court must execute its order consistently and strongly, without exceptions. Such a measure would not only realign the system and reaffirm the authority of the law but also curb the trend of seeking multiple adjournments on frivolous grounds, which serve to needlessly prolong and delay proceedings without valid or legitimate justification. Moreover, when the court issues an order providing the final chance, it not only issues a judicial order but also extends a commitment to the parties that no further adjournments will be permitted for any reason. The court must stand by its order and uphold its commitment, leaving no room or option for any alternative action.

Conclusion: When the last opportunity to produce evidence is granted and the party has been duly warned of the consequences, the court must execute its order consistently and strongly, without exceptions.

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8. **Supreme Court of Pakistan**
Chief Executive Officer NPGCL, GENCO-III, TPS Muzafargarrah v. Khalid Umar Tariq Imran and others
Civil Petition No.1787-L of 2022
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1787_l_2022.pdf

Facts: Through this petition, filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("the Constitution"), the petitioner has impugned the judgment of High Court whereby the constitution petition filed by the petitioner under Article 199 of the Constitution to challenge the legality of the order of the Full Bench of the National Industrial Relations Commission ("NIRC"), was dismissed while the orders of the Member NIRC were upheld.

Issues: i) What is the effect of not filing appeal under section 58 of Industrial Relations Act against ex-parte judgment of member National Industrial Relations Commission?
ii) Whether procedure prescribed under Civil Procedure Code in relation to suits may be followed by National Industrial Relations Commission, for the adjudication and determination of industrial disputes including the redressal of individual grievance?
iii) What is doctrine of election and from where this doctrine is derived by the courts?
iv) Why the rule of prudence of giving a choice to select a remedy from among several co-existent and/or concurrent remedies, has been developed by the courts of law?
v) What is the nature of order passed by member NIRC dismissing the application for setting aside ex-parte judgment and what remedy is available to aggrieved person against such order?
vi) Under what condition the benefit of Section 5 (condonation of delay) can be availed, when a special law governing a proceeding itself provides for a period limitation?
vii) For what purpose law of limitation is designed and whether valuable rights accrue in favour of other party on the expiration of limitation period?

Analysis: i) So, the petitioner, if feeling aggrieved by the said ex-parte judgment of the member NIRC, should have filed an appeal within 30 days. It is a matter of record that the petitioner did not file any appeal, and the prescribed period of limitation for filing the appeal under Section 58 of IRA expired; therefore, the said ex-parte judgment is final between the parties on the basis of the well known principle of *res judicata(…)*
ii) The objection raised by the counsel for the respondent that the petitioner could not have filed the aforementioned applications under the general law lacks merit and is rejected as being misconceived. This is because Regulation 45 of the National Industrial Relations Commission (Procedure and Functions) Regulations,

2016 stipulates that the procedure prescribed under the Civil Procedure Code (C.P.C.) in relation to suits may be followed for the adjudication and determination of industrial disputes, including the redressal of individual grievances. Therefore, the respondent could have filed such an application for setting aside the ex-parte judgment.

iii) It is a well-settled proposition of law that when an aggrieved person intends to commence any legal action to enforce any right and or invoke a remedy to set right a wrong or to vindicate an injury, he has to elect and or choose from amongst the actions or remedies available under the law. The choice to initiate and pursue one out of the available concurrent or coexistent actions or remedy from a forum of competent jurisdiction vest with the aggrieved person. Once the choice is exercised and the election is made then the aggrieved person is prohibited from launching another proceeding to seek relief or remedy contrary to what could be claimed and or achieved by adopting other proceeding/action and or remedy, which in legal parlance is recognized as 'doctrine of election', which doctrine is culled by the courts of law from the well-recognized principles of waiver and or abandonment of a known right, claim, privilege or relief as contained in Order II, rule (2) C.P.C., principles of estoppel as embodied in Article 114 of the Qanun-e-Shahadat Order 1984 and principles of *res-judicata* as articulated in section 11, C.P.C. and its explanations.

iv) Giving a choice to select a remedy from among several coexistent and/or concurrent remedies prevents the recourse to multiple or successive redressals of a singular wrong or impugned action. It also provides an opportunity for an aggrieved person to choose a remedy that best suits the given circumstances. Such a rule of prudence has been developed by courts of law to reduce the multiplicity of proceedings. As long as a party does not avail of the remedy before a Court of competent jurisdiction all such remedies remain open to be invoked. Once the election is made then the party generally, cannot be allowed to hop over and shop for one after another coexistent remedies.

v) We have however no hesitation to observe here that the order of the member NIRC, dismissing the application to set aside the ex-parte judgment would amount to a 'decision given' in terms of section 58 of the IRA. Therefore, the petitioner could have challenged this order by filing an appeal under section 58 of the IRA.

vi) It would be relevant to mention here that when the law under which proceedings have been initiated prescribes a period of limitation, the benefit of Section 5 of the Limitation Act, 1908 ("Limitation Act") which allows for the filing of an appeal, application for revision, or a review of the judgment, etc. after the period of limitation after satisfying sufficient cause, cannot be availed unless Section 5 has been made applicable as per Section 29(2) of the Limitation Act.

vii) The law of limitation provides an element of certainty in the conduct of human affairs. The law of limitation is a law that is designed to impose *quietus* on legal dissensions and conflicts. It requires that persons must come to Court and take recourse to legal remedies with due diligence. Therefore, the limitation

cannot be regarded as a mere technicality. With the expiration of the limitation period, valuable rights accrue to the other party.

Conclusion: i) When appeal is not filed against ex-parte judgment of member NIRC within prescribed period of limitation under Section 58 of IRA, the said ex-parte judgment is final between the parties on the basis of the well-known principle of res judicata.

ii) Yes, as per Regulation 45 of the National Industrial Relations Commission (Procedure and Functions) Regulations, 2016, procedure prescribed under Civil Procedure Code in relation to suits may be followed by National Industrial Relations Commission, for the adjudication and determination of industrial disputes including the redressal of individual grievance.

iii) See corresponding analysis no. iii, above.

iv) Such a rule of prudence has been developed by courts of law to reduce the multiplicity of proceedings.

v) The order passed by member NIRC dismissing the application for setting aside ex-parte judgment would amount to a 'decision given' in terms of section 58 of the Industrial Relations Act and remedy of appeal under said section 58 is available to aggrieved person.

vi) When a special law governing a proceeding itself provides for a period limitation, the benefit of Section 5 (condonation of delay) cannot be availed unless it has been made applicable by that law in accordance with Section 29(2) of the Limitation Act, 1908.

vii) The law of limitation is a law that is designed to impose quietus on legal dissensions and conflicts and with the expiration of the limitation period, valuable rights accrue in favour of other party.

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9. **Supreme Court of Pakistan**
Qudrat Ullah v. Additional District Judge, Renala Khurd District Okara etc.
Civil Petition No.8-L of 2023
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._8_l_2023_r.pdf

Facts: The Respondent No.3 instituted a suit for recovery of maintenance for her minor daughter/respondent No.4, when she was six months old, in the Court of Family Judge, which was decreed. Subsequently, Respondent No.3 filed a Family Suit for enhancement of maintenance amount. That suit was decreed and maintenance amount was enhanced. Thereafter, respondents preferred an appeal before the Additional District Judge, for further enhancement of maintenance which too was allowed. Being aggrieved, the petitioner filed a Writ Petition before High Court, which was dismissed. The petitioner has called in question the order passed by the High Court through this petition.

Issues: i) How the word “maintenance” can be defined?

ii) Whether it is a legal and religious duty of a man to maintain his wife and children?

iii) Whether the ratification by Pakistan of the United Nations Convention on the Rights of the Child, 1989, has become absolute?
iv) Whether a Muslim father is under an obligation to pay the expenses incurred on education of his children?

Analysis: i) In Pakistan, issues related to child maintenance are dealt with by the Muslim Family Laws Ordinance, 1961, and the West Pakistan Family Courts Act, 1964. However, these laws do not provide a specific definition for "maintenance." For better understanding it is suitable to rely on the dictionary meaning of the term. The word “maintenance” is derived from Arabic word “Nafaq” which means “to spend” and in literal sense, the word “nafaqah” (ةَقَفَن (means what a person spends on his family. The word “maintenance” has been defined in Black’s Law Dictionary, as under: “Financial support given by one person to another.” It has been defined in Section 369 of the Principles of Muhammadan Law by D.F Mulla… Such definition of maintenance is not exhaustive. The word "includes" is generally used in interpretation clauses in order to enlarge the meaning of words or phrases, occurring in the body of the Statute; and when it is so used those words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. In this view of the matter, it does not exclude other necessary expenses for mental and physical well-being of a minor. This view is also fortified by the judgment in Arslan Humayun and another wherein it was held that Section 369 ibid has a wider connotation and should be given an extended meaning, for the purposes of social, physical, mental growth, upbringing and wellbeing of the minor.

ii) Undeniably, the Almighty Allah is the only sustainer, but, He has created means through which this task is accomplished. Bearing the expenses of children is the second most important task of the father. In Islamic law “maintenance” is termed as Nafaqah (ةَقَفَن (and signifies all those things which are necessary to support life. It is the legal and religious duty of a man to maintain his wife and children. The obligation to maintain wife and children is derived from the Holy Quran and is one of the incidences of marriage. Verse 233 of Surah Al-Baqarah says: “…and it is incumbent upon him who has begotten the child to provide in a fair manner for their sustenance and clothing.” Furthermore, Verse 34 of Surah An-Nisaa enjoins: “Men are the protectors and maintainers of women because God has given the one more (strength) than the other and because they support them from their means.” Thus, right of child to be maintained by the father is ordained by Islamic law as mentioned above. Similarly, under Pakistani law, the maintenance of a child is an obligation primarily upon the father. The Family Courts Act 1964 and the Muslim Family Laws Ordinance 1961 (“MFLO”) deal with the issue of maintenance of minors in Pakistan.

iii) All the civilized nations of the world have recognised that children have rights by virtue of being children. These obligations are also erga omnes and have since been codified in the United Nations Convention on the Rights of the Child, 1989

(the "UNCRC"). UNCRC is an international treaty which sets out the rights of children. The State of Pakistan ratified the UNCRC on 12.11.1990 with its only reservation that its Articles will be interpreted in light of Islamic injunctions. However, in 1997, this reservation was withdrawn, thus, ratification became absolute.

iv) The concept of the "child's best interests" is not new. Indeed, it pre-dates the Convention and was already enshrined in the 1959 Declaration of the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, 1979, as well as in regional instruments and many national and international laws. When assessing and determining the best interests of a child the obligation of the State to ensure the child such protection and care as is necessary for his or her well-being should be taken into consideration. Children's well-being, in a broad sense includes their basic material, physical, educational, and emotional needs, as well as needs for affection and safety. It is in the best interests of the child to have access to quality education, including early childhood education. All decisions on measures and actions concerning a specific child must respect the best interests of the child or children, with regard to education. The above discussion leads us to draw a conclusion that it would be absolutely safe to include educational expenses also within the concept of maintenance of a child.

Conclusion: i) See under analysis No. (i).

ii) It is a legal and religious duty of a man to maintain his wife and children.

iii) The ratification by Pakistan of the United Nations Convention on the Rights of the Child, 1989 has become absolute.

iv) A Muslim father is under an obligation to pay the expenses incurred on education of his children however he is not bound to provide the maintenance for education at higher levels ad infinitum.

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10. **Supreme Court of Pakistan**
Syed Asghar Ali Shah etc. v. Kaleem Arshad and others
Civil Petitions No. 167-P and 391/2022
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._167_p_2022.pdf

Facts: Petitioners seek leave to appeal under Article 212(3) of the Constitution against the judgment of the Khyber Pakhtunkhwa Subordinate Judiciary Tribunal whereby the issue of seniority of respondent No.1 appointed as Additional District and Sessions Judge from the selection process of the year 2001 was considered and decided in terms of Rule 10(a) of the Khyber Pakhtunkhwa Judicial Service Rules 2011 read with Section 8(3) of the Khyber Pakhtunkhwa Civil Servants Act 1973, and his seniority was fixed along with his batch mates above the petitioners who were appointed from the selection process of the years 2002 and 2003.

Issues: i) What three parts of Article 212 of constitution describe?

ii) Whether administrative tribunal with specialized subject matter and a dedicated forum of appeal i.e. Supreme Court, is the significance of non-obstante clause in Article 212 (1) of Constitution that enables Article 212 to override the regular Constitutional regimes?

iii) What is effect of non-obstante clause in Article 212(2) of Constitution?

iv) Whether clause (2) of Article 212 of Constitution is merely an ouster clause and not jurisdictional clause?

v) Whether only federal legislature can vest jurisdiction in the Supreme Court under the Constitution (entry 55 of the Federal Legislative List) and therefore unless there is an Act of Parliament extending clause (2) (of Article 212) to a Provincial Tribunal, right to appeal is not available to this Court under clause (3) of Article 212?

vi) Whether appeal to the Supreme Court is available against orders of both the Federal and Provincial Administrative Tribunals by a special constitutional scheme provided under Article 212?

vii) Whether due to absence of law passed by Parliament to activate right of appeal before Supreme Court, the decision of a tribunal established under the provincial law is to be challenged under Article 199 of Constitution?

viii) Whether date or year of selection process determines the seniority of an officer as per Rule 10(a) of section 8(3) of the Khyber Pakhtunkhwa Civil Servants Act, 1973?

Analysis: i) Article 212, starts with a non-obstante clause and has three parts: (i) clause (1) empowers the appropriate legislature to establish Administrative Tribunals with exclusive jurisdiction over specific subject matters provided in clauses (a), (b) and (c); (ii) clause (2) does two things, it provides for an "ouster clause", excluding the jurisdiction of other courts in matters falling under the jurisdiction of the Administrative Tribunals under clause (1), and an "abatement clause", abating any proceedings in respect of any such matter pending before any other court except the Supreme Court. The proviso to clause (2) extends the "ouster clause" in clause (2) to the Provincial Administrative Tribunals established under clause (1) only if on the request of the Provincial Assembly through a resolution, clause(2) is extended to a Provincial Tribunal through an Act of Parliament; and (iii) under clause (3) an appeal by leave is provided to the Supreme Court against the decisions of these Administrative Tribunals, if they involve a substantial question of law of public importance.

ii) Article 212(1) has a non-obstante clause, i.e., "Notwithstanding hereinbefore contained", that overrides other provisions of the Constitution, in particular, Article 142, [Article 142 also begins with the phrase: "Subject to the Constitution"] which vests exclusive power in the federal legislature to make laws with respect to any matter in the Federal Legislative List and concurrent power in the federal and provincial legislatures to make laws only with respect to criminal law, criminal procedure and evidence. Article 212(1) authorizes and allows the

appropriate legislatures, both federal and provincial, to establish Administrative Tribunals with exclusive jurisdiction for dealing with specific subject matters as provided in clauses (a), (b) and (c) thereof. Federal legislature might not otherwise possess legislative competence under the Federal Legislative List, or under the concurrent power mentioned in Article 142, to establish these Administrative Tribunals regarding subject matters enumerated under clauses (a), (b) and (c) of Article 212(1); however, Article 212(1) of the Constitution empowers both the federal and provincial legislatures to establish such Administrative Tribunals over and above the permissible legislative competence under Article 142 and the Federal Legislative List. This unique legislative power of the provincial and federal legislatures to establish Administrative Tribunals under Article 212 with specialized subject matter and a dedicated forum of appeal, i.e., the Supreme Court, is the significance of the non-obstante clause that enables Article 212 to override the regular constitutional regime.

iii) Clause (2) of Article 212 also contains a non-obstante clause, which does two things: first, it ousts the jurisdiction of all other courts vested in them in terms of Article 175 to deal with matters covered under the exclusive jurisdiction of the Administrative Tribunals established under Article 212(1); and second, it provides that any such matter pending before any other court shall abate, excluding matters pending before the Supreme Court. The proviso to clause (2) further provides that the said ouster clause will come into effect for the Provincial Tribunals only if on the resolution of the Provincial Assembly the Parliament passes an Act, which extends the provisions of clause (2) to such a Tribunal. Such a Federal Law was once enacted in 1974 titled, the Provincial Service Tribunals (Extension of Provisions of the Constitution) Act, 1974 and admittedly there is no such law that extends to the Provincial Tribunal in question.

iv) Clause (2) of Article 212 is, in our opinion, merely an ouster clause and not a jurisdiction clause. In case of Federal Tribunals, it provides that no other court can take jurisdiction over any matter which falls under the subject matter of the Administrative Tribunal established under Article 212(1). If clause (2) has not been made applicable to a Provincial Tribunal, it at best means that there are other forums also available to redress the grievance of the officers, e.g., the High Court under Article 199 or the Civil Courts under Section 9 of the Civil of Procedure Code, 1908. In the absence of clause (2), all the judicial forums in a Province have concurrent jurisdiction along with the Provincial Administrative Tribunal. Once a civil servant invokes the jurisdiction of the Provincial Tribunal, the remedy of an appeal by leave against any decision of the Provincial Tribunal before this Court becomes alive. Remedy of appeal under clause (3) will not be available if the civil servant approaches the High Court or the Civil Court for the redressal of his grievance. Applicability of clause (2) to a Provincial Tribunal is totally insignificant as it has no effect on the remedy of appeal against the decision of the Provincial Tribunal before this Court which is ensured under clause (3).

v) Gomal [PLD 2023 SC 190] repeatedly lays stress on clause (2) and its proviso

to say that unless the provision of clause (2) is made applicable to a Provincial Tribunal, the remedy of appeal under clause (3) before this Court is not available against any decision of a Provincial Tribunal. This line of reasoning is based on the central principle formulated in Gomal; that only federal legislature can vest jurisdiction in the Supreme Court under the Constitution (entry 55 of the Federal Legislative List) and therefore unless there is an Act of Parliament extending clause (2) to a Provincial Tribunal, right to appeal is not available to this Court under clause (3). This line of reasoning is, with respect, flawed as Gomal fails to appreciate the clear and direct provision of the Constitution, i.e. clause (3) of Article 212, and instead places reliance on the legislative competence to enact a sub-constitutional law under the Constitution. While Gomal is right when it reasons that the appellate jurisdiction can only be conferred upon the Supreme Court by federal legislature under entry 55 of the Federal Legislative List and not by the provincial legislature, it utterly fails to appreciate that it is the non-obstante provision of Article 212 of the Constitution itself that is allowing appeal by leave from a Provincial Administrative Tribunal to the Supreme Court. The "principle" enunciated in Gomal, that "it is only the Parliament that can (if at all) enact legislation that acts upon or affects the jurisdiction of this Court[;] [t]he provincial assemblies cannot do so", has little significance once the Constitution itself has conferred appellate jurisdiction on the Supreme Court against matters arising from a Tribunal constituted under Article 212(1)(a). Even otherwise, the foundational premise of Gomal that only federal legislature can vest jurisdiction in this Court seems to have no nexus or co-relation with clause (2) which is simply an ouster clause. It is not as if the act of the Parliament under the proviso to clause (2) converts the Provincial Tribunal into a Federal Tribunal, or the provincial legislation into federal legislation, it simply ousts other courts from exercising jurisdiction in matters covered by a Provincial Tribunal.

vi) Clause (3) is the third part of Article 212, which provides than an appeal shall lie to the Supreme Court from a judgment, decree order or sentence of the Administrative Tribunal, and the Supreme Court shall grant leave if the Supreme Court is satisfied that a substantial question of law of public importance arises in the case. Clause (3) has no co-relation whatsoever with the ouster clause of clause (2). Whether a Provincial Tribunal enjoys the ouster clause or not, does not affect the appellate jurisdiction of this Court. Clause (3) is independently connected with all the administrative Tribunals, including Provincial Tribunals, established under Article 212(1). It is once again reiterated that the appeal to the Supreme Court is available against orders of both the Federal and Provincial Administrative Tribunals by a special constitutional scheme provided under Article 212, which due to the non-obstante clause is over and above any sub-constitutional legislation under the regular constitutional scheme.

vii) The law declared in Gomal that unless and until the proviso to Article 212(2) of the Constitution is activated, appeal against an order of a Provincial Tribunal is not available before this Court under Article 212(3) of the Constitution, and that in the absence of such a law passed by the Parliament, the decision of a Tribunal

established under the Provincial law is to be challenged under Article 199 of the Constitution, is not correct and is therefore overruled.

viii) Section 8(3) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 provides that the seniority shall be determined in accordance with the Rules prescribed under the said Act and Rule 10(a) of the Rules, 2001 provides that persons selected for the service in the "earlier selection" shall rank senior to the persons selected in a "later selection." The date or year of selection process determines the seniority of an officer as per Rule 10(a). Implied in the selection process is a group or batch of candidates who go through the selection process together and are subsequently selected and appointed together. Admittedly, respondent No.1 was a part and parcel of selection process of the year 2001 but he was denied appointment which he challenged before the High Court and was successfully appointed on the direction of the High Court. His seniority under Rule 10(a) will be considered from the date of his selection process along with his group and batch mates who were a part of the same selection process.

Conclusion: i) See above under analysis no. 01.

ii) Administrative Tribunals under Article 212 with specialized subject matter and a dedicated forum of appeal, i.e., the Supreme Court, is the significance of the non-obstante clause that enables Article 212 to override the regular constitutional regime.

iii) Clause (2) of Article 212 also contains a non-obstante clause, which does two things: first, it ousts the jurisdiction of all other courts vested in them in terms of Article 175 to deal with matters covered under the exclusive jurisdiction of the Administrative Tribunals established under Article 212(1); and second, it provides that any such matter pending before any other court shall abate, excluding matters pending before the Supreme Court.

iv) In the opinion of Supreme Court, Clause (2) of Article 212 is merely an ouster clause and not a jurisdiction clause.

v) The "principle" enunciated in Gomal, that "it is only the Parliament that can (if at all) enact legislation that acts upon or affects the jurisdiction of this Court[;] [t]he provincial assemblies cannot do so", has little significance once the Constitution itself has conferred appellate jurisdiction on the Supreme Court against matters arising from a Tribunal constituted under Article 212(1)(a).

vi) The appeal to the Supreme Court is available against orders of both the Federal and Provincial Administrative Tribunals by a special constitutional scheme provided under Article 212, which due to the non-obstante clause is over and above any sub-constitutional legislation under the regular constitutional scheme.

vii) It is incorrect that due to absence of law passed by Parliament to activate right of appeal before Supreme Court, the decision of a tribunal established under the provincial law is to be challenged under Article 199 of Constitution.

viii) Seniority under Rule 10(a)) of section 8(3) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 will be considered from the date of selection process

along with group and batch mates who were a part of the same selection process.

Additional Note:
Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._167_p_2022_an.pdf

Issues: i) Whether Article 212(2) of constitution provides right of appeal to Supreme Court as of right?
ii) What is the effect of ouster of jurisdiction under Article 212(2) and whether it is mandatory for the proviso contained therein to be activated in order for the leave to appeal to be filed before this Court?
iii) Whether proviso to Article 212(2) act as a bridge between Sub-Articles (1) and (3) of Article 212?
iv) Whether remedy of leave to appeal before the Supreme Court is available against the decision of the KPK Service Tribunal established under Article 212(1)?

Analysis: i) Article 212 clause (3) provides an appeal to the Supreme Court from the judgment, decree, order or sentence of the Tribunal shall lie to the Supreme Court. This appeal under Article 212(3) is not as of right but is subject to the satisfaction that a substantial question of law of public importance arises in the case.
ii) To my mind, Article 212(3) of the Constitution is the constitutional mandate which prescribes that leave to appeal before the Supreme Court for the Tribunal established under Article 212(1) of the Constitution can be filed directly, meaning thereby, the Constitution itself provides for the remedy of appeal before the Supreme Court. Both Sub-Articles (1) and (3) of Article 212 of the Constitution are exceptions to the legislative authority contained in Article 142 of the Constitution as the Constitution itself authorizes and permits the Federal and Provincial Legislature, irrespective of the authority given in Article 142 of the Constitution read with the Federal Legislative List (FLL), to establish the Tribunal and to allow its leave to appeal directly before this Court. Article 212(2) merely ousts the jurisdiction of other courts or fora. Resultantly, even though the Tribunal is established under Article 212(1), the ouster of jurisdiction of other courts is automatically triggered by Article 212(2) of the Constitution and with respect to federal courts but for the provincial courts it is necessary that the Provincial Assembly activate the proviso to Article 212(2) of the Constitution. In such case, the Tribunal will be an exclusive forum, which totally and completely ousts the jurisdiction of all other courts or fora with respect to the special subject-matters contained in SubArticles (a), (b) and (c) of Article 212(1) of the Constitution. However, if the proviso is not activated, meaning there is no resolution by the Provincial Legislature (followed by an Act of Parliament) the ouster of jurisdiction will not be triggered. Consequently, a litigant will have the option to avail its remedy before any other forum including the remedy before the Supreme Court.

iii) The proviso does not act as a bridge between Sub-Articles (1) and (3) of Article 212, rather it allows and empowers the Provincial Legislature to decide whether, for the purposes of the establishment of the Provincial Tribunal, remedy should lie exclusively to the Supreme Court or, in the alternate, giving more options to the litigant.

iv) As Article 212(1) of the Constitution itself confers jurisdiction on the Provincial Legislature to establish the Provincial Tribunal under Article 212(1), the Constitution also confers appellate jurisdiction to the Supreme Court from a judgment, decree, order or sentence of the said Provincial Tribunal, the remedy of leave to appeal before the Supreme Court is available against the decision of the KPK Service Tribunal established under Article 212(1) since these Petitions are with reference to the appeal under Section 5 of the SJST Act from an order of the said Service Tribunal.

Conclusion: i) Appeal under Article 212(3) is not as of right but is subject to the satisfaction that a substantial question of law of public importance arises in the case.

ii) Even though the Tribunal is established under Article 212(1), the ouster of jurisdiction of other courts is automatically triggered by Article 212(2) of the Constitution and with respect to federal courts but for the provincial courts it is necessary that the Provincial Assembly activate the proviso to Article 212(2) of the Constitution. If the proviso is not activated, meaning there is no resolution by the Provincial Legislature (followed by an Act of Parliament) the ouster of jurisdiction will not be triggered. Consequently, a litigant will have the option to avail its remedy before any other forum including the remedy before the Supreme Court.

iii) Proviso to Article 212(2) does not act as a bridge between Sub-Articles (1) and (3) of Article 212.

iv) The remedy of leave to appeal before the Supreme Court is available against the decision of the KPK Service Tribunal established under Article 212(1) in the view of section 5 of the SJST Act from an order of the KPK Service Tribunal.

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11. **Supreme Court of Pakistan**
Pervez Elahi v. Election Commission of Pakistan, etc.
Civil Petition No.181 of 2024.
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._181_2024_n.pdf

Facts: The petitioner filed nomination paper for the seat of a Member of the Punjab Provincial Assembly and Respondent No. 4 submitted his objections against the candidature of the petitioner. The Returning Officer rejected the nomination paper of the petitioner. The appeal of the petitioner before the Election Tribunal failed. The petitioner then preferred a writ petition in the Lahore High Court, which was also dismissed by a Full Bench of the Lahore High Court through the impugned order. Hence, this petition for leave to appeal.

Issues: i) Is the law require that a candidate must open a separate bank account for every seat he is contesting for election?

ii) Whether Returning Officer should reject nomination paper on the ground of any defect/ misdeclaration of the asset which is of a substantial nature?

Analysis: i) As for the first ground of rejection of nomination paper, the contention of the respondents is that the exclusive bank account has to be for every seat the candidate is contesting for and as the petitioner is also contesting for other seats, but he has mentioned one and the same bank account for all his nomination papers filed for several seats. We are afraid, the contention is misconceived. Our reading of the said provision is that the exclusivity of the required bank account is for the "purpose of election expenses", and not for the number of seats the candidate is contesting for in the elections. One exclusive bank account for the election expenses to contest for any number of seats, in our view, meets the statutory requirement. For the purpose of requiring such exclusive bank account is to ensure compliance with the provisions of Section 132(3) of the Act, which has prescribed an upper limit of expenses for election to a seat in the Senate, the National Assembly and a Provincial Assembly. If a person contests for election to more than one seats, his expenses should not exceed the aggregate of the prescribed expenses for all those seats. The stance taken by the respondents that the candidate must open a separate bank account for every seat he is contesting for, is not the intent and purpose of the law and is therefore not legally sustainable.

ii) As far as the objection of misdeclaration of the asset in Form B is concerned, the said asset is a 10 marla land in Tehsil Phalia, District Mandi Bahauddin. According to the mutation placed before us the land was purchased on 30.11.2023, whereas the requirement of Section 60(2)(d) is that the statement of assets and liabilities should be as on the preceding 30th day of June i.e., 30.06.2023 and, therefore, the alleged procurement of the asset in question, though denied by the petitioner, has no bearing on the nomination paper filed by the petitioner. Perusal of the Form B submitted by the petitioner clearly shows that the listed assets are as on 30.06.2023. Even otherwise, the petitioner has categorically denied that he has purchased the said property and no summary inquiry has been conducted by the RO to ascertain the factual position under section 62(9) of the Act (…) Had the petitioner not disputed his ownership of the said land, the RO may have directed him to mention the same in his statement of assets; as the second proviso to Section 62(9) of the Act specifically prescribes for the ROs that they should not reject any nomination paper on the ground of any defect which is not of a substantial nature and may allow such defect to be remedied forthwith.

Conclusion: i) The law does not require that a candidate must open a separate bank account for every seat he is contesting for election.

ii) Returning Officer should not reject nomination paper on the ground of any defect/ misdeclaration of the asset which is not of a substantial nature.

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12. **Supreme Court of Pakistan**
Rohan Ahmad v. The State etc.
Crl.P.894-L/2023
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._894_l_2023.pdf

Facts: Through this petition**,** the Petitioner sought leave to appeal against the order dated 22.08.2023 of High Court, whereby his second post arrest bail in case FIR, under Section 11 PECA, 2016 read with sections 295-B, 298-C, 120-B, 34 and 109 PPC at the FIA Cybercrime Reporting Centre, Police Station FIA Cybercrime Wing was declined.

Issues: i) Whether statutory right to be released on bail under the third proviso to Section 497 CrPC merely a statutory right?
ii) In what circumstances statutory right of bail along with other constitutional rights are available to an accused?
iii) Whether merely counting the number of adjournment requests alone is not enough to justify withholding bail?
iv) When trial of accused is suspended by revisional court, can the same be attributed to accused for bail on statutory right?
v) How a High Court should exercise authority to order stay or suspend the proceedings in a criminal trial?

Analysis: i) In our view the statutory right to be released on bail under the third proviso to Section 497 CrPC is not merely a statutory right but also stands firmly on constitutional guarantees under Article 4, 9 and 10A of the Constitution. Under the said Articles the accused, like any other citizen enjoys the protection of law and to be treated in accordance with law; the accused cannot be deprived of liberty, except in accordance with law; and in determination of any criminal charge against him the accused shall be entitled to a fair trial and due process.
ii) These basket of rights are available to an accused who enjoys a presumption of innocence in his favour and understandably cannot be subjected to an indefinite pre-trial detention and therefore cannot be denied bail under the third proviso to section 497(1), Cr.P.C unless there is convincing material that the delay has been occasioned by the act or omission of the accused himself or if his case falls under any of the exceptions under the fourth proviso to section 497 CrPC.
iii) For an accused to be denied statutory bail, it must be demonstrated that his act or omission, was intentionally aimed at prolonging the trial. It must show a deliberate pattern of seeking adjournments without valid reasons during key hearings such as the examination or cross-examination of prosecution witnesses. Mere counting the number of adjournment requests alone is not enough to justify withholding bail. The application of the third proviso to Section 497(1) of the

Cr.P.C when interpreted in the light of Articles 9 and 10A of the Constitution, broadens and enhances the rights of an accused who is presumed innocent during trial. The prosecution must present clear evidence that the accused or his counsel was actively trying to delay the trial through unnecessary adjournments or irrelevant applications, in order to justify denying bail. As already held by this Court, the act or omission on the part of the accused to delay of the timely conclusion of the trial must be an outcome of a concerted and consistent effort of the accused orchestrated to delay the trial.

iv) …The Criminal Revision has not progressed for no fault of the petitioner, there is nothing on the record that the delay has been occasioned by the act or omission of the petitioner. The delay has been mainly due to the act of the High Court as the case was repeatedly relisted and not taken up on several hearings for no fault of the accused and thus the indefinite delay in the trail has been due to the act of the High Court which cannot be attributed to the accused in any circumstance.

v) While the High Court enjoys the authority to order stay or suspend the proceedings in a criminal trial, in a deserving case, it is equally important that such an exercise of authority must be carried out with caution and circumspection, ensuring expeditious disposal of the case after the grant of injunctive relief. High Court should not lose sight of the case where it has exercised its extraordinary power of staying or suspending the proceeding of a criminal trial but should make it a point of finally disposing of such proceedings as early as possible. Public interest necessitates that the administration of justice is improved for sustaining the faith of a common man in rule of law and justice delivery system, which are closely and inextricably linked.

Conclusion: i) Statutory right of an accused to be released on bail under the third proviso to Section 497 CrPC is not merely a statutory right but also stands firmly on constitutional guarantees under Article 4, 9 and 10A of the Constitution.

ii) See corresponding analysis no. ii, above.

iii) Mere counting the number of adjournment requests alone is not enough to justify withholding bail. For an accused to be denied statutory bail, it must be demonstrated that his act or omission, was intentionally aimed at prolonging the trial.

iv) A delay caused by the suspension of a trial due to an act of the Revisional Court cannot be attributed to the accused under any circumstances.

v) See corresponding analysis no. v, above.

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13. **Supreme Court of Pakistan**
Umar Aslam Khan v. Election Commission of Pakistan, etc.
Civil Petition No.159 of 2024
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail
Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._159_2024.pdf

Facts: The petitioner sought leave to appeal against the order passed by a Full Bench of the Lahore High Court, Lahore, whereby his nomination paper for seat of the National Assembly was rejected on the ground that he is a proclaimed offender in a criminal case.

Issue: Whether a proclaimed offender is disqualified from contesting the elections?

Analysis: The august court observed that since there is no provision either in the Constitution or in the Elections Act that makes a proclaimed offender disqualified from contesting the election, the courts cannot on their own create such additional disqualification, without any backing of the law. Further reference was made to Civil Appeal No. 982 of 2018 etc. titled Hamza Rasheed Khan v. Election Appellate Tribunal & Others to opine that Article 62 (1) (d), (e), (f) and (g) was not to be considered self-executory and to serve as guidelines for the voters in exercising their right to vote, hence even being a proclaimed offender would not attract the disqualification under the said provisions.

Conclusion: See analysis part above

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14. **Supreme Court of Pakistan**
Commissioner Inland Revenue Zone-IV, Karachi v. M/s A.P. Moller Maersk
Civil Petition No. 560-K to 573-K of 2019
Commissioner Inland Revenue Zone-IV, Karachi v. M/s Safmarine Container Line
Civil Petition No. 574-K to 589-K of 2019
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._560_k_2019.pdf

Facts: In these petitions, the petitioner raised a question whether income arising from container detention charges ("CDC"), container service charges ("CSC") and terminal handling charges ("THC") falls within the category of "profits from the operation of ships in international traffic" in the context of double taxation conventions concluded between Pakistan and Denmark, as well as between Pakistan and Belgium.

Issues: i) Whether the Pakistan-Denmark Convention and the Pakistan-Belgium Convention have overriding effect on the Income Tax Ordinance 2001?
ii) Whether Tax treaties require a broad purposive interpretation and their interpretation may be more liberal than domestic law?
iii) What are meanings of the terms CDC, CSC and THC?
iv) Whether profits arising from CDC, CSC, and THC fall within the scope of the term "profits from the operation of ships in international traffic"?

Analysis: i) The respondents, being tax residents of Denmark and Belgium, are entitled to the benefits and concessions under the Pakistan-Denmark Convention and the Pakistan-Belgium Convention, as the case may be, in line with the provisions of

Section 107 of the Income Tax Ordinance 2001 ("Ordinance"). Under subsection 2(c) of Section 107 of the Ordinance, the taxability of the respondents' income is to be determined under the provisions contained in the two Conventions which override the Ordinance. These Conventions provide for allocation of taxing jurisdiction to the contracting States in respect of different heads of income.

ii) International tax treaties, conventions or agreements, given their unique nature, as held in Snamprogetti, require a distinct interpretive approach compared to the one used while interpreting domestic legislation. These agreements being international treaties are governed by the rules of interpretation outlined in the Vienna Convention on the Law of Treaties. Tax treaties differ from domestic tax laws in language, application, and purpose. These treaties are relieving in nature and seek to avoid double taxation, while domestic tax law imposes tax in specific situations. Tax treaties require a broad purposive interpretation, and their interpretation may be more liberal than domestic law. Treaty interpretation is a separate subject from statutory interpretation, accentuating the need to interpret tax treaties independently of domestic law. The role of a State in a bilateral agreement is more of implementing the terms of such agreement rather than that of interpreting the same and that too in a unilateral manner. Given that the primary purpose of tax treaties is to avoid and relieve double taxation through equitable and acceptable distribution of tax claims between the countries, it is important that the provisions of these treaties are interpreted in a common and workable manner, taking into account international tax language, legal decisions of other countries, model treaties, along with their commentaries, developed by the Organization for Economic Cooperation and Development ("OECD") and the United Nations ("UN") , and scholarly academic works where appropriate.

iii) CDC is the amount collected on account of rent of container, which is charged if a customer holds the said container beyond the stipulated time required to discharge the goods at the intended port of disembarkation; CSC is collected by shipping lines on account of services in respect of containers which may be required due to discharge of goods at the destination; and THC is collected by shipping lines on account of terminal charges incurred at the port of disembarkation.

iv) We see that the operation of ships in international traffic has been given special tax treatment in Pakistan-Denmark Convention and the Pakistan-Belgium Convention in accord with the OECD Model Convention ("OECD MC") and the UN Model Convention ("UN MC"). The expression "profits from the operation of ships in international traffic" also covers profits from activities directly connected with such operations as well as profits from activities which are not directly connected with the operation of the enterprise's ship in international traffic as long as they are ancillary to such operation – activities that the enterprise does not need to carry on for the purposes of its own operation of ships in international traffic but which make a minor contribution relative to such operation and are so closely related to such operation that they should not be regarded as a separate business or source of income of the enterprise should be

considered to be ancillary to the operation of ships in international traffic. The objective scope of Article 8 of the OECD MC and the UN MC with its reference to "profits from the operation of ships in international traffic" covers not only profits directly obtained by the enterprise from the transportation of passengers or cargo by ships that it operates in international traffic, but also, profits from activities directly connected with such operations as well as profits from activities which are not directly connected with the operation of the enterprise's ships in international traffic as long as they are ancillary to such operation. Activities are to be considered ancillary to the operation of ships in international traffic if (i) the enterprise does not need to undertake them for the purposes of its own operation of ships in international traffic but which otherwise (ii) make a minor contribution relative to such operation and (iii) are so closely related to such operation that they should not be regarded as a separate business or source of income. Article 8 OECD and UN MC therefore applies not only to profits directly obtained in international traffic e.g. transport of passengers or cargo, sales of tickets of the enterprise, leasing of ships, but also to profits directly connected with international traffic and to profits ancillary to international traffic e.g. inland transport, interest, code sharing and slot chartering, haulage services and catering services, provision of goods and services to other enterprises, sales of tickets on behalf of other enterprises, advertising on behalf of other enterprises, letting of immovable property, rental of containers. The issue in question concerns income arising from three sources: CDC, CSC, and THC. Notably, two of these sources involve charges imposed for services related to containers, whereas the third pertains to charges associated with terminal services for cargo handling. In the context of such income sources, Vogel, a recognized authority, emphasizes the widespread use of containers in international transport. Profits arising from short-term storage of containers or from detention charges for the late return of containers, according to Vogel, are covered within the purview of "profits from the operation of ships in international traffic". Further, special remuneration for services ancillary to container operations are covered within the ambit of shipping income from international traffic. Income derived from services provided for cargo handling is also considered part of shipping income from international traffic when directly connected or ancillary to the operation of ships in international traffic. We thus reach the conclusion that profits arising from CDC, CSC and THC are connected with and ancillary to the operation of ships in international traffic. Consequently, these profits squarely fall within the purview of the expression "profits from the operation of ships in international traffic".

Conclusion: i) The Pakistan-Denmark Convention and the Pakistan-Belgium Convention have overriding effect on the Income Tax Ordinance 2001.

ii) Tax treaties require a broad purposive interpretation and their interpretation may be more liberal than domestic law.

iii) See under analysis no. (iii)

iv) Profits arising from CDC, CSC and THC are connected with and ancillary to

the operation of ships in international traffic. Consequently, these profits squarely fall within the purview of the expression "profits from the operation of ships in international traffic".

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15. **Supreme Court of Pakistan**
Tahir Sadiq (in both cases) v. Faisal Ali, etc. (in both cases)
Civil Petition No.150 & 152 of 2024
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._150_2024_3012024.pdf

Facts: The nomination paper of the petitioner for the seat of a Member of the National Assembly was rejected by the Returning Officer mainly on the ground that the petitioner was a 'proclaimed offender'. However, on appeals of the petitioner, the Appellate Tribunal accepted his nomination paper. Thereafter, the respondent filed writ petitions before the Lahore High Court which were accepted. Hence, these petitions.

Issues: i) What does right to form or be a member of a political party under Article 17(2) of Constitution include?
ii) How the courts ought to deal with the matters of acceptance or rejection of the nomination papers filed for contesting elections?
iii) Whether an accused can be treated as proclaimed offender without taking proceedings u/s 87 Cr.P.C.?
iv) Whether proclaimed offender is denied all discretionary reliefs in cases having no nexus with case in which he has been so proclaimed?
v) Whether nomination paper of a candidate can be rejected on the ground of his being proclaimed offender?

Analysis: i) The right to form or be a member of a political party under Article 17(2) of our Constitution includes not only the right to contest elections but also the right to vote for the candidate of one's choice. When viewed against the backdrop of the constitutional value of 'political justice', Article 17(2) remains hollow unless it also recognizes the right of citizens to choose their representatives fairly and freely from amongst the candidates. This right is also an expression of the choice of the citizens, which finds further support under Article 19 of the Constitution. In exercise of these fundamental rights, citizens shape their destiny by forming the government they want.
ii) The aim of prescribing qualifications and disqualifications for candidacies to contest elections is to maintain the integrity and effectiveness of the political process. Qualifications and disqualifications of a candidate for the electoral process must therefore be clearly spelled out in the Constitution or the law. Otherwise, electoral laws must be interpreted in favour of enfranchisement rather than disenfranchisement so that maximum choice remains with the voters to elect their future leadership. With this approach rooted in the high constitutional rights

and values, the courts are to deal with the matters of acceptance or rejection of the nomination papers filed for contesting elections.

iii) In the absence of proceedings taken under Section 87, Cr.P.C., an accused cannot be said or treated to be a proclaimed offender.

iv) As the rule of declining discretionary reliefs to a proclaimed offender is one of propriety when the same is confronted with a right, it is the right, not the rule of propriety that prevails. It is also important to note that the disadvantage, if any, for being a proclaimed offender ordinarily relates only to the case in which a person has been so proclaimed, and not to the other cases or matters which have no nexus to that case. For instance, a proclaimed offender is not disentitled to institute or defend a civil suit, or an appeal arising therefrom, regarding his civil rights and obligations.

v) Articles 62 and 63 of the Constitution read with Sections 231 and 232 of the Act provide for qualification and disqualification of a candidate, which does not mention that a "proclaimed offender" is disqualified from being elected or from being a member of Parliament. The grounds provided for rejection of a nomination paper in Section 62(9) of the Act also do not empower the Returning Officers to reject the nomination paper of a candidate on the ground of his being a proclaimed offender. Although no provision of the Act has been pointed out to us that requires the necessary presence of the candidate during the electoral process, we may observe that if there is any such provision, the absence of the candidate may have its own consequences under that provision, but his nomination paper cannot be rejected on such ground unless the legislature so provides in Section 62(9) of the Act.

Conclusion: i) The right to form or be a member of a political party under Article 17(2) of Constitution includes not only the right to contest elections but also the right to vote for the candidate of one's choice.

ii) The courts are to consider that qualifications and disqualifications of a candidate for the electoral process must be clearly spelled out in the Constitution or the law otherwise, electoral laws must be interpreted in favour of enfranchisement rather than disenfranchisement.

iii) In the absence of proceedings taken under Section 87, Cr.P.C, an accused cannot be said or treated to be a proclaimed offender.

iv) The disadvantage, if any, for being a proclaimed offender ordinarily relates only to the case in which a person has been so proclaimed, and not to the other cases or matters which have no nexus to that case.

v) Nomination paper of a candidate cannot be rejected on the ground of his being proclaimed offender unless the legislature so provides in Section 62(9) of the Elections Act.

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16. **Supreme Court of Pakistan**
Vice Chancellor Agriculture University, Peshawar, etc. v. Muhammad Shafiq, etc.
C.Ps No. 2270, 4783 and 4784 of 2019 etc.
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2270_2019.pdf

Facts: Respondents filed a writ petition before the Peshawar High Court, Peshawar praying for their regularization of service and grant of all back benefits. The High Court held that as some of the Respondents having a similar nature of job, have already been regularized, the Respondents were also entitled to be dealt with accordingly. The petitioners challenged the said judgment of High Court.

Issues: i) Whether contractual employees can be regularized in the absence of any law or policy allowing such regularization?
ii) Whether regularization of service can be given a retrospective effect?

Analysis: i) It is well settled that there is no vested right to seek regularization for employees hired on contractual basis unless there is any legal or statutory basis for the same. The process of regularization requires backing of any law, rules or policy. It should adhere to the relevant statutory provisions and government policies. In the absence of any of the same, a contractual employee cannot claim regularization… Any regularization without the backing of law offends the principles of fairness, transparency and meritocracy and that too at the expense of public exchequer.
ii) It is well established that regularization takes effect prospectively, from the date when a regularization order is passed. This is because regularization is based on several considerations which help gauge not only the competence and ability of the employee, proposed to be regularized, but also the financial impact and long term legal obligations on the employer institution. It is a conscious decision to be taken by the employer institution at a particular time and therefore cannot be given a retrospective effect.

Conclusion: i) Contractual employees cannot be regularized in the absence of any law or policy allowing such regularization.
ii) Regularization of service cannot be given a retrospective effect.

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17. **Supreme Court of Pakistan**
Mst. Haseena Bibi v. Abdul Haleem, etc.
Civil Appeal No. 1227 of 2016
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1227_2016.pdf

Facts: The appellant filed suit for recovery of dower etc. which was decreed family court and same was upheld by appellate court. The respondent filed writ petition before

Peshawar High Court which was allowed, hence this appeal.

Issues: i) Whether estoppel can lie against right of wife to dower?
ii) What is status of an agreement by mother waiving her statutory right of Hizanat of minor child?

Analysis: i) Dower is a right rendered by Islam and has a footing in statutes. It is a well-known fact that no estoppel lies against a statute and it has been held by this Court in the case of Bahadur Khan and others v. Federation of Pakistan [2017 SCMR 2066], that there could be no estoppel against the statute or the rules having statutory force. Since right to dower has its footing in Section 5 of the Act, therefore, a wife cannot be estopped from such right and any agreement where she waives the same is void.
ii) So far as the custody of minor is concerned, Para 352 (5) of the Muhammadan Law provides that the mother is entitled to the custody (Hizanat) of her male child until he has completed the age of seven years and of her female child until she has attained puberty. These rights cannot be denied to her as any such action would be contrary to law. Any agreement related to the custody of minor child would be violative of law and cannot be enforced by a Court of law. Any Iqrarnama/ Agreement/Compromise made by the mother waiving her statutory right of Hizanat of a minor child would be violative of law and cannot be enforced by a Court of law.

Conclusion: i) Right to dower has its footing in Section 5 of the Act, therefore, a wife cannot be estopped from such right and any agreement whereby she waives the same is void.
ii) Any Iqrarnama/ Agreement/Compromise made by the mother waiving her statutory right of Hizanat of a minor child would be violative of law and cannot be enforced by a Court of law.

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18. **Supreme Court of Pakistan**
Matloob Ellahi Paracha v. Raja Arshad Mahmood & another
Civil Appeal No.1877 of 2016
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1877_2016_dt_24_01_2024.pdf

Facts: A suit for specific performance was instituted. The case continued until it was dismissed after eight years of litigation. The second round of litigation was brought by the plaintiff to recover earnest money, to which the cause of action arose after the dismissal of the first suit for specific performance, and has reached Supreme Court in appeal 18 years after the sale agreement.

Issues: i) What is the object of Order II, Rule 2 CPC?

ii) Whether the plaintiff should sue for all causes of action in one suit if these arise from one transaction as per Order II, Rule 2 CPC?
iii) Whether the plaintiff, after withdrawing his suit for specific performance of the agreement to sell, could file a fresh suit to recover the earnest money paid to the defendants under the said agreement?
iv) What is the limitation period if the suit to recover the earnest money is found to be competent?

Analysis: i) It is now old-line that Order II, Rule 2 CPC is intended to deal with the vice of splitting a cause of action. It provides that a suit must include the whole of any claim that the plaintiff is entitled to make in respect of the cause of action on which he sues and that if he omits (except with the leave of the Court) to sue for any relief to which his cause of action would entitle him, he cannot claim it in a subsequent suit. The object of this salutary rule is doubtlessly to prevent a multiplicity of suits.

ii) Order II, Rule 2 CPC does not require that when several causes of action arise from one transaction, the plaintiff should sue for all of them in one suit. This proposition gets strength from Saminathan Chetty v. Planaiappa Chetty, 2 in which the Privy Council observed that Rule 2 of Order II CPC is directed to securing the exhaustion of the relief in respect of a cause of action and not to inclusion in one and the same action of different causes of action, even though they arise from the same transactions.
iii) …the right to possession accrues only when specific performance is decreed, similarly, the right to refund of earnest money accrues only when specific performance is denied. As such, the facts relating to the denial of specific performance resulting from the cancellation of the agreement to sell, and the settlement agreement in the case constituted a fresh cause of action, and therefore, the second suit for recovery of money based thereon could not be held to be barred under Order II, Rule 2 CPC…Apropos of the objection based on the bar contained in the provisions of Order XXIII, Rule 1 CPC, it would be enough to say that the subject-matter or claim of the second suit, as stated above, was different from the first suit and, as such, the plaintiff could not be held to be precluded from instituting the second suit.
iv) Article 97 deals with a suit "for money paid upon an existing consideration which afterwards fails". We say so because a plain reading of it dictates three ingredients for its applicability: firstly, the suit must be for money; secondly, such money must have been paid upon a consideration which was in existence at the time of the payment; and lastly, the said consideration must have afterwards failed. Be it noted that if all these ingredients are established, the application of Article 97 cannot be resisted, and the starting point of limitation of three years under it would be not the date when the money was paid but when the consideration fails.

Conclusion: i) The object of this salutary rule is doubtlessly to prevent a multiplicity of suits.

ii) Order II, Rule 2 CPC does not require that when several causes of action arise from one transaction, the plaintiff should sue for all of them in one suit.
iii) The plaintiff, after withdrawing his suit for specific performance of the agreement to sell, could file a fresh suit to recover the earnest money paid to the defendants under the said agreement.
iv) See above in analysis clause.

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19. **Supreme Court of Pakistan**
Khaleelullah & others v. Muhaim Khan & others.
Civil Appeal No. 25-Q/2018
Mr. Justice Yahya Afridi, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.a._25_q_2018_dt_25_01_2024.pdf

Facts: The petitioners filed instant appeal challenging three concurrent findings recorded by the Courts below of a matter concerned the legacy of maternal great-grandfather as legal heirs being his great-grandchildren after a lapse of thirty years following the death of their mother.

Issues: i) Whether the law of limitation applies to a case when a third-party interest in the estate of the deceased predecessor has already been established?
ii) When the cause of action to sue accrues to an heir in the case of denial of the inheritance?
iii) Is it necessary to specify the details of an objection mentioned in written statement and is the court obliged to consider & decide objection to the law of limitation even not raised?

Analysis: i) … where third-party interest is created in the inherited property, is legally more problematic, as the legal heir would then have to face the wrath of the period of limitation. The burden of proof would rest on the claimant heir to demonstrate and prove that he was not aware of having been deprived, give cogent reasons for not challenging the property record of long-standing, or showing complicity between the buyer and the seller (the ostensible owner) or that the buyer knew of his interest in the property and yet proceeded to acquire the same. It is when faced with such legal handicap that the claimant heir may seek exception to the bar of limitation provided under Section 18 of the Limitation Act, by establishing that he was kept oblivious to the cause of action or accrual of his rights through fraud, and therefore, was an „injuriously affected person". Thus, in cases, where the claimant heir, being an „injuriously affected person" has a right to sue, does not institute the suit claiming his right within the prescribed limitation period, no fresh period of limitation can be available to him, his legal heir(s) or any other person who derives his right to sue from or through him (the injuriously affected person) (…) In the matter at hand, the threatened or apprehended denial occurred when Hafeezullah (the predecessor of the respondents) transferred the share of Mehrullah into his own name in the revenue records during 1958-60. The actual denial of the rights of the appellant took place over sixty years ago, when

Hafeezullah, father of the respondents, sold to others, portions of the disputed property in years 1994 and 1997. Therefore, considering that the third-party transactions were executed sixty years ago, the period of limitation under Article 120 of the Schedule to the Limitation Act has elapsed and therefore, makes the suit filed by the appellants in 2007, time-barred.

ii) In the case of denial of the inheritance to an heir, the cause of action to sue accrues to him, when the co-sharer[s]/legal heir[s] in actual possession of the inherited property denies (actually) or is interested to deny (threatens) the share of the claimant legal heir in the inherited property. The actual denial of right of a co-sharer by the other co-sharer may occur, when the latter does something explicit in denial of the rights of former, such as by making a fraudulent sale or gift deed. This Court has recently clarified that the transfer of property to a third party, be it through sale or gift, constitutes an actual denial of rights. In contrast, a simple annotation in the revenue records is regarded as a threatened or apprehended denial of rights.

iii) As to the objection of the learned counsel for the appellants that the creation of third-party interest was not mentioned in the written statement, and therefore, the same should not be pleaded or evidenced in the current case. Upon reviewing the written statement, we noted that the objection regarding limitation has been appropriately recorded. According to the principles of pleadings, once an assertion is duly recorded, its specifics need not be detailed therein. Even otherwise, if the objection as to the law of limitation is not raised by any of the parties to the suit, the trial Court and the appellate Court are obligated under section 3 of the Limitation Act to consider and decide the same.

Conclusion: i) The law of limitation applies to a case when a third-party interest in the estate of the deceased predecessor has already been established.

ii) In the case of denial of the inheritance to an heir, the cause of action to sue accrues to him, when the co-sharer[s]/legal heir[s] in actual possession of the inherited property denies (actually) or is interested to deny (threatens) the share of the claimant legal heir in the inherited property.

iii) According to the principles of pleadings, once an assertion is duly recorded, its specifics need not be detailed therein and if the objection as to the law of limitation is not raised by any of the parties to the suit, the trial Court and the appellate Court are obligated under section 3 of the Limitation Act to consider and decide the same.

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20. **Supreme Court of Pakistan**
Muhammad Saleem v. Govt. of Balochistan through Chief Secretary and another
CMA No.145-Q/2022 in Civil Petition No. 61-Q of 2018
Mr. Justice Yahya Afridi, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a.145_q_2022_dt_02_01_23.pdf

Facts: The petitioner in essence seeks to challenge the judgment of the Balochistan Service Tribunal, whereby his request for accepting his lien against the post of Junior Scale Stenographer was rejected.

Issues: i) What is the meaning of the term *'lien'* in the context of service law?
ii) Whether under rule 6(2) of the Civil Servants (Confirmation) Rules, 1993, right of lien of a civil servant is forfeited who takes up an appointment on selection, other than by way of transfer on deputation, to a position in an autonomous body under the control of Federal Government, Provincial Government, local authority or a private organization?

Analysis: i) The ordinary dictionary meaning of the word "*lien*", is stated to be "a right to keep possession of property belonging to another person until a debt owed by that person is discharged" or "a right to retain possession of another's property pending discharge of a debt". While, according to Black's Law Dictionary, the said term is defined as "a legal right or interest that a creditor has in another's property, lasting usually until a debt or duty that it secures is satisfied". However, the above definitions of the term "lien" cannot be strictly applied to a civil servant under the service law of our country. In the context of service law, the term "lien" has a statutory connotation and refers to a legal right of a civil servant to hold a particular post, typically a higher one, to which they have been promoted or transferred, while still retaining a right on their original post, based on provisions provided for the same under the rules or regulations framed by the appropriate Government. Hence, simply put, lien in service law is a right of a civil servant to return to his original position, based on the fulfillment of the conditions set out in the rules or regulations framed by the appropriate Government.
ii) As per Rule 6(2) of the Rules of 1993, a civil servant who takes up an appointment on selection, other than by way of transfer on deputation5, to a position in an autonomous body under the control of Federal Government, Provincial Government, local authority or a private organization, effectively undergoes a change of status from that of a civil servant to a different employment category. Crucially, this transition results in the forfeiture of his lien against the post in his parent department or authority. The lien, representing the legal right to return to his former position within the civil service, is thus relinquished when he moves, on his own accord, to a non-governmental body and accepts an appointment therein on selection. It may be underlined that while transfers within various Government departments (whether Federal or Provincial) do not alter the fundamental status of a civil servant, a move to an autonomous body under the control of Government, except by way of transfer on deputation6, signifies a substantive change in the nature of employment. This change is of such a magnitude that it necessitates the relinquishment of specific rights and privileges inherent to his previous civil service position, including the lien.

Conclusion: i) The term *'lien'* in service law is a right of a civil servant to return to his original position, based on the fulfillment of the conditions set out in the rules or

regulations framed by the appropriate Government.
ii) Under rule 6(2) of the Civil Servants (Confirmation) Rules, 1993, right of lien of a civil servant is forfeited who takes up an appointment on selection, other than by way of transfer on deputation, to a position in an autonomous body under the control of Federal Government, Provincial Government, local authority or a private organization.

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21. **Supreme Court of Pakistan**
Shaukat Ali v. The State through Prosecutor General, Punjab, Lahore and Ali Ashraf
Criminal Petition No.528-L/2023
Azeem Hassan Mushtaq v. The State through Prosecutor General, Punjab, Lahore and Shaukat Ali
Criminal Petition No. 1068-L/2023
Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._528_l_2023.pdf

Facts: Through this petition filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner/complainant assails the order passed by the High Court by which post arrest bail was granted to the respondent.

Issue: Whether a post arrest bail can be cancelled on the ground that the accused is extending threats of dire consequences to the complainant?

Analysis: The learned Additional Sessions Judge found that sufficient incriminating material is available against all the accused including the respondent. As regard the respondent being a highly influential person WHO is extending threats of dire consequences to the petitioner, we observe that it amounts to the misuse of concession of bail, thus in the circumstances, the impugned order cannot sustain.

Conclusion: A post arrest bail can be cancelled on the ground that the accused is extending threats of dire consequences to the complainant.

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22. **Supreme Court of Pakistan**
Senior General Manager, Pakistan Railways, etc. v. Muhammad Pervaiz
Civil Appeal No. 512 of 2021
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._512_2021.pdf

Facts: This Civil Appeal with leave of the Court is directed against the judgment passed by the Federal Service Tribunal, Islamabad in Appeal whereby the appeal filed by the instant respondent was allowed and the respondent was held to be entitled to receive advance increments from the date of acquiring the higher qualification of L.L.B.

Issues: i) Whether an employee of Pakistan Railways who has obtained two advance increments on acquiring M.A./M.Sc. degree is entitled to any advance increments on acquiring L.L.B. degree and vice versa?

ii) Whether the policy of granting advance increments on acquiring L.L.B. degree is only available to the official of Pakistan Railway who is either dispensing justice or directly connected with the work of dispensing justice?

iii) Whether the Court can act as an appellate authority with the aim of scrutinizing the propriety, suitability, and/or adequacy of a policy, or may it act as an advisor to the executive on matters of policy which they are entitled to formulate?

Analysis: i) The learned Tribunal observed that the policy of advance increments was discontinued by Pakistan Railways vide Notification dated 13.09.2001. In fact, the office of the Auditor General of Pakistan, Islamabad, in consultation with the Finance Division, decided that two advance increments are admissible on acquiring either L.L.B. degree or M.A. or M.Sc. (Master of Science) degree to the employees in BS-1 to BS15 working in organizations which are either dispensing justice, or directly connected with the work of dispensing justice, with a further rider that employees who have obtained two advance increments on acquiring M.A./M.Sc. degree are not entitled to any advance increments on acquiring L.L.B. degree and vice versa.

ii) Moreover, according to the aforementioned O.M. dated 12.01.2000, the policy of granting advance increments on acquiring L.L.B. degree was only available to the employees of the courts. The O.M. dated 16.01.2000 on the other hand conveyed the approval of the competent authority for allowing two advance increments on acquiring L.L.B. degree, being equal to a M.A./M.Sc. degree, to all the officials working in the organizations which are either dispensing justice or directly connected with the work of dispensing justice, with immediate effect. The learned counsel for the respondent neither argued that the respondent was ever engaged in or assigned any duty which was directly related to court work or directly connected with the work of dispensing justice, nor was she able to highlight that any other persons were granted advance increments on qualifying L.L.B. in addition to, or in spite of already having been granted advance increments on qualifying M.A./M.Sc.

iii) The ambit and purview of judicial review of government policies is now well settled and defined and thereunder the Court can neither act as an appellate authority with the aim of scrutinizing the propriety, suitability, and/or adequacy of a policy, nor may it act as an advisor to the executive on matters of policy which they are entitled to formulate. The object of judicially reviewing a policy is to ascertain whether it violates the fundamental rights of the citizens, or is at variance to the provisions of the Constitution, or opposed to any statutory provision, or demonstrably arbitrary or discriminatory. The court may invalidate laws, acts and governmental actions that are incompatible with a higher authority, or an executive decision for being unlawful which maintains a check and balance. Such a declaration can be sought on the ground that the decision-maker misdirected itself in law, exercised a power wrongly or improperly or purported to exercise a power that it did not have, which is known as acting ultra vires; a

decision may be challenged as unreasonable if it is so unreasonable that no reasonable authority could ever have come to it, or due to a failure to observe the statutory procedures. The dominance of judicial review of the executive and legislative action must be kept within the precincts of the constitutional structure so as to avoid any misgivings or apprehension that the judiciary is overstepping its bounds by engaging in unwarranted judicial activism.

Conclusion: i) An employee of Pakistan Railways who has obtained two advance increments on acquiring M.A./M.Sc. degree is not entitled to any advance increments on acquiring L.L.B. degree and vice versa.
ii) The policy of granting advance increments on acquiring L.L.B. degree is only available to the official of Pakistan Railways who is either dispensing justice or directly connected with the work of dispensing justice.
iii) The Court cannot act as an appellate authority with the aim of scrutinizing the propriety, suitability, and/or adequacy of a policy, nor may it act as an advisor to the executive on matters of policy which they are entitled to formulate.

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23. **Supreme Court of Pakistan**
Rahimullah Khan v. Deputy Postmaster General, Southern Postal Region, Khyber Pakhtunkhwa and others.
Civil Petition No. 1066 of 2022.
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1066_2022.pdf

Facts: The petitioner filed this Civil Petition for leave to appeal against the judgment passed by the Federal Service Tribunal, Islamabad in appeal contended the grievance of the petitioner that he was appointed as a postman and on attaining the age of superannuation, he was retired from service in year 2015 and after four years of retirement, the respondent department issued the impugned order in year 2019 whereby the intervening period with effect from 01.09.2013 to 17.05.2015 was treated without leave. The appeal filed by the petitioner was dismissed.

Issues: i) Whether the principle of "no work, no pay" is applicable when consequential back benefits have been accorded by the Tribunal?
ii) Whether the letter after considerable period of retirement of civil servant for withholding the salary with retrospective effect is warranted under the law?

Analysis: i) The petitioner was deprived of his pay for the intervening period, from 01.09.2013 to 17.05.2015, in view of F.R. 54 (a) merely on the ground that he was not honourably acquitted by the Tribunal, and the major penalty was modified in view of the judgment passed on 25.05.2016 in Appeal No. 791 (P) CS/2013. Still, in tandem, the department is ignoring that the same Tribunal in the same judgment also set aside the impugned orders, and the petitioner was reinstated into service with consequential back benefits. In another judgment in the case of the same petitioner by the same Tribunal on the very next date, i.e., 26.05.2016, in Appeal No. 789 (P) CS/2013, the major penalty of withholding of two steps

increment for two years without future effect was modified into withholding one increment for one year only. However, in the judgment dated 25.05.2016, the reinstatement order was passed with consequential back benefits, which order is in the field. There is a marked distinction between criminal cases and service matters. The petitioner was not indicted by the Tribunal in any criminal case or offence; rather, the decision was rendered on the appeals of the petitioner, whereby he challenged the order of the departmental authority and not the order or judgment of any court of law trying the offence under criminal or penal laws. Therefore, in the present set of circumstances, the question of honourable acquittal or conviction does not arise. Furthermore, when the Tribunal has passed the reinstatement order with consequential back benefits, then, in this particular situation, the revising or appellate authority cannot undo or make ineffective the order or judgment passed by the Tribunal for the payment of consequential back benefits. The penalty imposed on the petitioner was only confined to withholding of an increment for a certain period, which does not otherwise mean to withhold his pay for the period he actually rendered his services to the department, and the principle of "no work, no pay" is not applicable when consequential back benefits have been accorded by the Tribunal.

ii) The Civil Service Regulations are premeditated to define the conditions under which salaries, leaves, pension, and other allowances are earned by the employees in the service of the Civil Departments and the manner in which the perks are calculated. But at the same time, these regulations do not deal otherwise than indirectly and incidentally with matters relating to recruitment, promotion, official duties, and discipline. Since the intricacies of Article 417-A of the Civil Service Regulations ("C.S.R.") bear significance in addressing the controversy (…) the petitioner retired on 18.05.2015 and the letter for withholding his emoluments from 01.09.2013 to 17.05.2015 was issued to him on 14.02.2019, whereas, under Article 417-A of the C.S.R., the pending disciplinary proceedings could not continue if the officer attains the age of superannuation before the completion of the inquiry. Therefore, in that context too, the pending proceedings if any were abated and there was no justification to issue the letter after considerable period of retirement for withholding the salary with retrospective effect which was totally unjustified and unwarranted.

Conclusion: i) The principle of "no work, no pay" is not applicable when consequential back benefits have been accorded by the Tribunal.

ii) The letter after considerable period of retirement of civil servant for withholding the salary with retrospective effect is unwarranted under the law as well unjustified.

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24. **Lahore High Court**
Moonis Elahi v. Election Commission of Pakistan & others.
Writ Petition No.2431 of 2024
Mr. Justice Ali Baqar Najafi, Mr. Justice Shahid Bilal Hassan, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC160.pdf

Facts: Through this Constitutional petition the petitioner/candidate has challenged order passed by the learned Election Tribunal as well as order passed by the Returning Officer whereby nomination papers of the petitioner were concurrently rejected.

Issues: i) What is the definition of "Power of Attorney" or "Mukhtar Nama"?
ii) Under what circumstances is a power of attorney commonly used, and when does it become ineffective?
iii) What is the relevant provision of 'Recognized agents and Pleaders'?

Analysis: i) According to section 2 of the Attorney Act, 1882, power of attorney is written authorization, whereby the "Principal" authorizes the agent to do the acts specified therein on behalf of "Principal" which when executed will be binding on the "Principal" as if done by him. Primary purpose of instrument of such nature is to assign authority of Principal to another person as his agent…A power of attorney (known in Urdu as "Mukhtar Nama") is a legally binding document authorizing someone to manage a person's property, medical, or financial affairs, etc. or perform some other acts as enshrined in the power of attorney on behalf of the Principal.
ii) It is commonly used when a person cannot manage his affairs due to his absence, disability, incapacity, or infirmity; it allows an agent to make decisions on behalf of the principal. It empowers the agent to decide the principal's affairs. However, it becomes null and void when its purpose is accomplished, or else the person who executes it or the agent dies. Nonetheless, instructions for managing assets and affairs after death are listed in the last will or living trust.
iii) Order III Rules 1 & 2 of the Code of Civil Procedure, 1908 deal with 'Recognized agents and Pleaders'. A study of Order III Rule 1 of the Code of Civil Procedure, 1908 shows that it empowers the party, his recognized agent, or his pleader to make an appearance, file an application, or act in or to any court required or approved by any law. Further, Order III Rule 2 of the Code, 1908 describes the recognized agents as persons with power of attorney and persons carrying on trade or business for and in the names of parties who are not residents within the local limits of the court's jurisdiction. Order III Rules 1 and 2 of the Code, 1908 also allows the agent/holder of power of attorney to "act" on behalf of the principal. Nevertheless, if the power of attorney holder has performed some "acts" according to the instrument, he may depose for the principal for those acts, but not for acts performed by the principal and not by him. Similarly, he cannot testify on behalf of the principal in matters about which only the principal has personal knowledge and about which the principal is entitled to cross-examination.

Conclusion: i) See above in analysis portion.
ii) See above in analysis portion.
iii) Order III Rules 1 & 2 of the Code of Civil Procedure, 1908 is the relevant provision of 'Recognized agents and Pleaders'.

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25. **Lahore High Court**
Muhammad Nawaz Kasuri v. Haji Muhammad Aslam Qadri and others
C.R. No. 3472 of 2014
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC7565.pdf

Facts: Civil Revision has been filed impugning the order passed by the trial court under section 12(2) CPC reviving the earlier suit which was dismissed on the basis of settlement between the parties.

Issues: (i) Can a relief be claimed under section 12(2) CPC 1908 where the party had already exhausted the remedies envisaged under the law but failed to obtain a favourable decision?
(ii) Limitation for filing an application under section 12(2), CPC?

Analysis: (i) The Court observed that no one can be allowed to reopen a chapter, which has already been closed under the garb of filing an application under section 12(2) CPC in particular where the requirements of Order VI, Rule 4 CPC are not met. Nobody could be allowed to do indirectly what law barred him from doing directly. By relying on 2011 SCMR 551, it was observed that where the object of the petitioner in moving application under section 12(2), C.P.C. was to re-agitate the issue which already stood closed on account of his withdrawal of the suits, the petitioner then could not be allowed to do indirectly what the law barred him from doing directly.
(ii) The court by relying on 2011 SCMR 551 opined that an application under section 12(2), C.P.C. being a substitute for a suit, the limitation imposed by law on filing of suits were relevant for applications under section 12(2), C.P.C.

Conclusion: (i) See analysis part above.
(ii) See analysis part above.

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26. **Lahore High Court**
Imran Ahmad Khan Niazi v. Spl. Judge, A.T.C, etc.
Criminal Revision No.54056/2023
Miss. Justice Aalia Neelum, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2024LHC175.pdf

Facts: Through this single consolidated order all the petitions filed by petitioner, are being decided because one and the same question is involved in said petitions with the identical prayer for setting-aside the orders of similar nature passed by

learned Special Judge, Anti-Terrorism Court, Lahore whereby applications for exemption from personal attendance and applications for pre-arrest bail filed by the petitioner in the cases, have been dismissed.

Issues: i) Whether during pendency of application for pre-arrest bail if some explanation has been given or brought into notice of the court regarding non-appearance of the accused and said explanation is satisfactory, then his presence can be exempted?

ii) Whether court can procure attendance of an accused, who is arrested in another case or confined in jail in another case and it is made impossible for him to approach the court where his application for pre-arrest bail is pending on the relevant date and said state of affairs comes into notice/knowledge of the court, to decide the application for pre-arrest bail on merits?

Analysis: i) By now it is well settled that presence of accused on each and every date of hearing before the court during pendency of application for pre-arrest bail is necessary/ mandatory and if he is not present in the court, his petition is to be dismissed due to lack of his presence, however, it is also equally well settled that if some explanation has been given or brought into notice of the court regarding non-appearance of the accused and said explanation is satisfactory, then his presence can be exempted.

ii) It goes without saying that if an accused is granted ad-interim pre-arrest bail in a case and during pendency of said application for pre-arrest bail before the court, he is arrested in another case or confined in jail in another case and it is made impossible for him to approach the court where his application for pre-arrest bail is pending on the relevant date and said state of affairs comes into notice/knowledge of the court, then court has to consider that whether absence of the accused is for the reason beyond his control and in such circumstances, court can procure his attendance to decide the application for pre-arrest bail on merits.

Conclusion: i) During pendency of application for pre-arrest bail if some explanation has been given or brought into notice of the court regarding non-appearance of the accused and said explanation is satisfactory, then his presence can be exempted.

ii) Court can procure attendance of an accused, who is arrested in another case or confined in jail in another case and it is made impossible for him to approach the court where his application for pre-arrest bail is pending on the relevant date and said state of affairs comes into notice/knowledge of the court, to decide the application for pre-arrest bail on merits.

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27. **Lahore High Court**
Muhammad Waqas v. Additional Sessions Judge, etc.
Writ Petition No.79261 of 2023
Ms. Justice Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2024LHC187.pdf

Facts: Through instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has prayed for setting aside the order passed by the learned Ex-Officio Justice of Peace at Lahore, whereby I.G. Punjab,

Lahore, was directed to proceed against the petitioner under section 155-C of Police Order 2002, after registering a case against him.

Issues: i) Where an accused is arrested and detained in the physical custody of the police, whether he can be detained in police custody for more than 24 hours?
ii) Under Article 10 (2) of the Constitution and Section 61 of Cr.P.C., for getting authorization from the Court for detention, either in judicial custody or police custody, whether the accused has to be physically produced before the Magistrate under Section 167 of Cr.P.C?

Analysis: i) Personal liberty is one of the cherished objects of the Constitution of the Islamic Republic of Pakistan 1973. The deprivation of the same can only be by the procedure established by law and in conformity with the provisions thereof, as stipulated in Article 10 (2) of the Constitution of the Islamic Republic of Pakistan 1973 which mandates that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate. A similar provision is found in Section 61 of the Code of Criminal Procedure, which also mandates that no police officer shall detain in custody a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable. In the absence of a particular order of a Magistrate under Section 167 of the Code of Criminal Procedure, such period shall not exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court. These two provisions reveal that without the authorization of a Magistrate, no arrestee shall be detained in the custody of the police beyond 24 hours from the time of arrest, excluding the time taken for the journey from the place of arrest to the Court. In this regard, there could be no controversy that when an accused is detained in police custody after arrest beyond 24 hours, excluding the time taken for the journey from the place of arrest to the Court, such detention beyond the said period is undoubtedly illegal.
ii) As is mandated under Article 10 (2) of the Constitution of the Islamic Republic of Pakistan 1973 and Section 61 of the Code of Criminal Procedure, for getting authorization from the Court for detention, either in judicial custody or police custody, the accused has to be physically produced before the Magistrate under Section 167 of Cr.P.C., is the law which regulates and empowers a Magistrate to authorize the detention of the accused either in police custody or in judicial custody, as the case may be.

Conclusion: i) Where an accused is arrested and detained in the physical custody of the police, he cannot be detained in police custody for more than 24 hours.
ii) Under Article 10 (2) of the Constitution and Section 61 of Cr.P.C., for getting authorization from the Court for detention, either in judicial custody or police custody, the accused has to be physically produced before the Magistrate under

Section 167 of Cr.P.C.

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28. **Lahore High Court**
Sardar Waseem Ilyas v. Federation of Pakistan, etc.
Writ Petition No.71690 of 2023
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC7493.pdf

Facts: Petitioner is aggrieved of withdrawing an amount from his personal account by invoking Section 140 of the Income Tax Ordinance, 2001.

Issues: i) Whether it is necessary that every notice shall contain the necessary information of the proceedings and material based on which the coercive measure for recovery of demand is to be taken?
ii) What is the impact of forceful withdrawal of an amount from personal and business account in absence of due process?
iii) Whether the Commissioner can invoke the provisions of Section 140 without seeking prior approval from FBR?

Analysis: i) Though Article 19A of the Constitution gives an independent fundamental right regarding dissemination of necessary information, however, the way FBR is proceeding in recovery matters has made it necessary to hold that every notice shall contain the necessary information of the proceedings and material, based on which the coercive measure for recovery of demand is to be taken.
ii) Forceful withdrawal of an amount from personal and business account, in absence of due process, is infringement of fundamental rights under Article 23 of the Constitution, besides having negative impact on taxpayer's business and business activities in general.
iii) The provisions of Section 140 shall be invoked, when Commissioner believes that the taxpayer may run away with the demand, which will become irrecoverable forever. Such action against an active taxpayer, for the sake of recovery only, amounts to robbery, if due process is not followed. Till the time it is incorporated in the Rules, the Commissioner shall not invoke the provisions of Section 140 without seeking prior approval from FBR.

Conclusion: i) It is necessary that every notice shall contain the necessary information of the proceedings and material based on which the coercive measure for recovery of demand is to be taken.
ii) See above in analysis clause.
iii) Till the time it is incorporated in the Rules, the Commissioner shall not invoke the provisions of Section 140 without seeking prior approval from FBR.

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29. **Lahore High Court**
Haroon Farooq v. Govt. of the Punjab & others
W.P No.227807/2018
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2023LHC7619.pdf

Facts: Through this writ petition the High Court issued the continuing mandamus to Water & Environment Commission through which different directions were issued for the conversion of water and preservation of environment. The report has been submitted by the Members of the Water & Environment Commission appointed by this Court that alludes to the sustainable efforts which continued during the year 2023 which has now come to a close.

Issue: What is the scope of continuing mandamus or supervisory jurisdiction of High Court?

Analysis: It is clear from the narration above that substantial and practical steps have been taken to control air pollution and to preserve groundwater. During the winter season these steps largely contributed to lowering AQI at different places in Lahore and thereby smog was controlled which had initially assumed dangerous proportions. This is an illustration of judicial review in action, and enforcement of climate justice. These actions are beyond mere judgements which adorn law journals and fail to address in actual terms, the climate chaos which surrounds us. It is, in essence, a case of continuing mandamus or supervisory jurisdiction where orders of this Court are enforced by a Commission set up to compel implementation. The departments in turn, come back with reports of compliance and further orders are issued for complete climate justice and to protect fundamental rights of persons. This is a unique tool being employed by this Court which has yielded substantial results.

Conclusion: See above in analysis clause.

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30. **Lahore High Court,**
Mst. Munawarjan and 6 others v. Mst. Safaidan and 4 others,
Civil Revision No.934-D of 2012,
Mr. Justice MirzaViqas Rauf.
https://sys.lhc.gov.pk/appjudgments/2023LHC7553.pdf

Facts: The suit filed by the petitioners for declaration, separate possession through partition and injunction, challenging sanctity of a gift mutation intended to alienate land of predecessor in interest of parties in favour of one of his sons, had been decreed by the Trial Court, however, the Appellate Court allowed consequent appeal setting at naught the judgment and decree passed by the Trial Court, hence, instant revision under Section 115 of the Code of Civil Procedure, 1908.

Issues: i) Whether it is necessary for a beneficiary of the challenged gift mutation to assert or lead any material with regard to relevant transaction of gift after such mutation is admitted by witness of claimants challenging sanctity thereof?
ii) When the limitation period of six-year to challenge a gift through a suit for decree of declaration, as provided by Article 120 of the Limitation Act, 1908, would start running?
iii) If judgments of the Trial Court and the Appellant Court are at variance, then finding of which court should in ordinary course be preferred while exercising jurisdiction under section 115 of the Code of Civil Procedure, 1908?

Analysis: i) In terms of Order VI, Rule 4 of the Code of Civil Procedure, 1908, a party pleading any misrepresentation or fraud regarding a transaction is obliged to narrate particulars to that effect. Article 113 of the Qanun-e-Shahadat Order, 1984 ordains that no fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which they agree to admit by any writing under their hands before the hearing, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings.
ii) A suit for declaration of any right as to any property has to be instituted under Section 42 of the Specific Relief Act, 1877, while the limitation of such suit is to be regulated and governed by Article 120 of the Limitation Act, 1908. The right to sue accrues to a person against the other for declaration of his right, as to any property, when the latter denies or is interested to deny his such right.
iii) Whilst exercising revisional jurisdiction, a comparative analysis is supposed to be made of both the judgments of the Trial Court and the Appellant Court in order to examine their validity on the touchstones of Section 115 of the Code of Civil Procedure, 1908, especially when there is divergence of views in judgments of both the courts below and their conclusions are contrary to each other.

Conclusion: i) There remains no necessity for the beneficiary of the challenged gift mutation to assert or lead any material with regard to relevant gift transaction in the case when such mutation is admitted by witness of claimants challenging sanctity thereof.
ii) The limitation period of six-year to challenge a gift through a suit for decree of declaration, as provided by Article 120 of the Limitation Act, 1908, would start running from the date of donor's knowledge regarding such gift.
iii) In the matter of giving preference to the judgments of lower courts while analyzing the same in exercise of revisional jurisdiction, the preference and regard is always given to the findings of the appellate court, unless those are suffering with any legal infirmity or material irregularity.

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31. **Lahore High Court**
Riaz Ahmed Khan v. Election Commission of Pakistan, etc.
W.P.No.195 of 2024
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC193.pdf

Facts: This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 stems from order, whereby District Returning Officer, while proceeding on the application of respondents No.3 and 4 changed their polling station.

Issues: i) Whether under sub-section (5) of section 59 of the Elections Act 2017, a candidate can file objections and suggestions with regard to any polling station in his constituency and a voter with respect to a polling station to which he has been assigned?

ii) Whether the criteria for the establishment or change of polling station is to be made dependent upon the number of F.I.R's registered in the police station of that area and vote casting ratio?

iii) Where once it evinces from the record that there is some grave violation of law in the conducting of elections and establishment of polling stations, whether High Court is vested with the jurisdiction to redress and cure such patent illegalities in exercise of its powers under judicial review?

Analysis: i) In order to amend, consolidate and unify laws relating to the conduct of elections and matters connected therewith or ancillary thereto, the Elections Act (XXXIII of 2017) (hereinafter referred to as "Act, 2017") was enacted. Chapter V of the "Act, 2017" lays down the procedure for the conduct of elections to the Assemblies. Section 59 is directly related to the matter in issue as it deals with the establishment of Polling Stations for the purpose of election. It clearly manifests from the bare reading of the above referred provision that while notifying polling station, the Election Commission, in ordinary circumstances, shall retain the polling stations established for the preceding election. Sub-section (5), however, postulates that a candidate can file objections and suggestions with regard to any polling station in his constituency and a voter with respect to a polling station to which he has been assigned.

ii) It is, thus, apparent from the tenor of the impugned order that the respondent No.2 was mainly influenced with the vote casting ratio and registration of F.I.R's of murder and attempt of murder against some persons living near Govt. Primary School Allah Dad, Khelan Wala. In order to defend the impugned order, a report is also submitted by respondent No.2 in response to this constitutional petition. In para-4 of parawise comments, three F.I.R's are mentioned, which relate to the years 2006, 2018 and 2020 respectively. Needless to observe that if criteria for the establishment or change of polling station is made dependent upon the number of F.I.R's registered in the police station of that area, no polling station can be allowed to subsist. If such a trend is allowed to prevail, then there will be no constituency where a polling station can be established. Registration of only three cases in fourteen years starting from 2006 to 2020 would speak loudly that this part of the world is more peaceful as compared to any other territory. So far second limb of reasons which prevailed upon the respondent No.2 for swapping

the notified polling station that there is less vote casting ratio; suffice to observe that respondent No.2 while forming this view was surely oblivious of turnover of the voters in the preceding election where vote casting ratio at the Govt. Boys Primary School, Allah Dad Khelan Wala was more than 50%.

iii) There is no cavil to the proposition that conducting of elections and establishment of polling stations is primarily a subject falling within the domain of Election Commission. Needless to mention that establishment of a polling station at a suitable place is one of the steps to ensure fair and transparent voting process. Where once it evinces from the record that there is some grave violation of law in the said process, this Court is vested with the jurisdiction to redress and cure such patent illegalities in exercise of its powers under judicial review.

Conclusion: i) Under sub-section (5) of section 59 of the Elections Act 2017, a candidate can file objections and suggestions with regard to any polling station in his constituency and a voter with respect to a polling station to which he has been assigned.

ii) The criteria for the establishment or change of polling station is not to be made dependent upon the number of F.I.R's registered in the police station of that area and vote casting ratio.

iii) Where once it evinces from the record that there is some grave violation of law in the conducting of elections and establishment of polling stations, High Court is vested with the jurisdiction to redress and cure such patent illegalities in exercise of its powers under judicial review.

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32. **Lahore High Court**

Employees Old Age Benefit Institution v. M/s Mughals Pakistan (Pvt.) Ltd., etc.

R.F.A. No.43092 of 2022

Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez

https://sys.lhc.gov.pk/appjudgments/2023LHC7498.pdf

Facts: This and connected appeal are directed against decision, whereby Civil Court, exercising powers under sections 14 and 17 of the Arbitration Act 1940, made Award Rule of the Court. Aggrieved of the order, two separate appeals are preferred, one by EOBI and other by Pakistan Real Estate Investment and Management Company (Pvt). Ltd.

Issues: i) Whether during proceedings under section 20 of the Arbitration Act 1940, in the absence of party to the arbitration agreement, a matter can be referred to the Arbitral Tribunal?

ii) Whether a person or an entity, merely being the signatory to the agreement, for and on behalf of one of the party to the agreement, is competent to file petition under section 20 of the Arbitration Act, 1940, unless its status as party to the agreement is satisfactorily established, by virtue of any law or under any contractual arrangement?

Analysis: i) In terms of sub-section (1) of section 20 of the Act, 1940, apparently four conditions must be satisfied before the jurisdiction is exercised by the court:- (i) There must be arbitration agreement between person(s). (ii) Agreement was entered before the institution of any suit with respect to subject matter of the agreement. (iii) A difference has arisen to which agreement applies. (iv) And they or any of them, instead of proceeding under Chapter II, may apply to the Court having jurisdiction in the matter to which the agreement relates. In the instant case compliance of aforesaid conditions are found missing. By no stretch of imagination PRIMACO could be construed as party to the agreement – by pulling it within the ambit of the expressions, 'they" or 'any of them'. Command of sub-section (3) of section 20 of the Act, 1940 is clear, which directs that 'the Court shall direct notice thereof to be given to all parties to the agreement other than the applicants. Civil Court, before referring the matter to Arbitral Tribunal, failed in its duty to ensure notice to the party to the agreement – EOBI. Arbitrators otherwise could only be appointed with the consent of the parties to the agreement but here presence of one of the party to the agreement [EOBI] was conspicuous by its absence – [requirement of sub-section 4 of section 20 of the Act, 1940 was not fulfilled]. Mere knowledge of the Board of EOBI would not satisfy the requirements of section 20 of the Act, 1940 nor condone the legal flaw occasioned upon referring matter to Arbitral Tribunal, without impleading EOBI as party.

ii) No person or an entity, merely being the signatory to the agreement, for and on behalf of one of the party to the agreement, was competent to file petition under section 20 of the Act, 1940, unless its status as party to the agreement is satisfactorily established, by virtue of any law or under any contractually arrangement. PRIMACO fails on both counts to claim any alleged assignment of rights or novation of contractual obligation. In these circumstances, order of referring the matter to Arbitral Tribunal and proceedings conducted subsequent thereto, including arbitration proceedings and issuance of Award without EOBI, are found unlawful and invalid. No validity could otherwise be extended to the Award in wake of an invalid order of reference. No plausible explanation is provided that if PRIMACO was to be treated as an alter ego of EOBI, why EOBI was impleaded as necessary / proper party to the proceedings under sections 14 and 17 of the Act, 1940. It is nobody's case that Award was exclusively enforceable against PRIMACO, and if EOBI was not party to the Award how Award could be enforced against EOBI.

Conclusion: i) During proceedings under section 20 of the Arbitration Act 1940, in the absence of party to the arbitration agreement, a matter cannot be referred to the Arbitral Tribunal.

ii) No person or an entity, merely being the signatory to the agreement, for and on behalf of one of the party to the agreement, is competent to file petition under section 20 of the Arbitration Act, 1940, unless its status as party to the agreement is satisfactorily established, by virtue of any law or under any contractual

arrangement.

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33. **Lahore High Court**
Hamza Khalid v. The State and another
Crl. Misc. No.72452/B/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC7628.pdf

Facts: The petitioner seeks post-arrest bail in case FIR registered at Police Station FIA, for an offence under section 18 of the Emigration Ordinance, 1979 read with section 6 of Passport Act, 1974 and sections 34/109 PPC.

Issues: i) Whether an officer claiming authority under section 5(5) of the FIA Act have unfettered powers?
ii) Where the property is seized as a result of an illegal raid or the powers are not exercised in accordance with section 5(5) of the FIA Act, what would be the effect of such illegality or irregularity on the fate of the case?

Analysis: i) An officer claiming authority under section 5(5) of the FIA Act does not have unfettered powers. He must act in good faith and refrain from arbitrary actions. There must be circumstances justifying the necessity for swift intervention. Furthermore, the property sought to be seized should have a nexus with the investigation of the alleged offence…To assert jurisdiction under section 5(5) of the FIA Act, the officer concerned must document the facts and reasons in the case diary (to the extent possible), laying the foundation for his decision/opinion.
ii) In *Justice Qazi Faez Isa and others v. President ofPakistan and others* (PLD 2022 SC 119), the Supreme Court ruled that the Qanun-e-Shahadat, 1984, governs the admissibility of evidence. According to Article 18 of this law, the criterion is whether the evidence is relevant to the facts in issue. Therefore, unless there is an express or necessarily implied prohibition in the Constitution or other laws, evidence obtained through illegal search or seizure is not liable to be excluded. Ordinarily, the same principle applies in both civil and criminal proceedings…Nevertheless, our judicial system insists that tax authorities strictly follow the legal procedure for conducting searches. The courts have consistently held that carrying out raids on taxpayers' premises by tax authorities without obtaining permission from a magistrate and without providing reasons for the claim of an emergencyis illegal…criminal cases falling within the ambit of the FIA Act are notably different from those under the purview of tax authorities. As such, they must be dealt with distinctively. In these matters, the principles established by the Supreme Court in *Justice QaziFaez Isa's* case apply… Considering the urgency involved, any procedural irregularities or illegalities in the process should be condoned, especially when the petitioner has not alleged any malice on the Complainant's part or any member of his team. Nonetheless, the petitioner may demonstrate during the trial if the actions caused him any prejudice.

Conclusion: i) An officer claiming authority under section 5(5) of the FIA Act does not have

unfettered powers.
ii) Where the property is seized as a result of an illegal raid or the powers are not exercised in accordance with section 5(5) of the FIA Act, such illegality or irregularity would not adversely affect the case unless malice on part of the complainant or any member of his team is established.

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34. **Lahore High Court**
Khushi Muhammad v. Raj Bibi
Civil Revision No.295-D/2013
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC7640.pdf

Facts: The Respondent/Plaintiff instituted a declaratory suit against the Petitioner/Defendant which was dismissed by the trial court but the said judgment and decree was set aside by the appellate court. Consequently, the petitioner filed revision petition against the said judgment and decree of the said appellate court.

Issues: i) Whether limitation runs against a co-sharer/co-owner?
ii) How the limitation shall be computed if a person entitled to institute a suit or submit an application has, by means of fraud, been kept from the knowledge of such right or the title on which it is founded?
iii) Whether mutation confers any title?
iv) Whether the failure of the revenue staff to comply with the provisions of section 42 of the Punjab Land Revenue Act, 1967, invalidates the transactions covered by mutations?
v) Whether mutation alone can prove the transaction specially in cases involving an elderly, illiterate, and *pardanashin* lady?
vi) Whether *Roznamcha Waqiati* forms a part of the record of rights?

Analysis: i) It is trite that no limitation runs against a co-sharer/co-owner. Every co-sharer/co-owner is presumed to be in possession of every inch of the joint property unless it is partitioned.
ii) Section 18 of the Limitation Act addresses this issue. It states that if a person entitled to institute a suit or submit an application has, by means of fraud, been kept from the knowledge of such right or the title on which it is founded, or if any document necessary to establish such right has been fraudulently concealed from them, the time limit for filing a suit or application (a) against the person guilty of the fraud or accessory thereto, or (b) against any person claiming through them otherwise than in good faith and for valuable consideration, shall be computed from the time when the fraud first became known to the person injuriously affected thereby. In the case of the concealed document, the computation starts when the person first gains the means to present it or enforce its production.
iii) Mutation does not confer any title. It primarily serves the purpose of updating records for fiscal purposes. Despite its limited role, mutation plays a crucial role in preventing fraud by protecting the owner's proprietary rights and securing the

rights of the vendee/transferee once attested.

iv) Section 42(7) of the 1967 Act imposes mandatory requirements for the attestation of mutations. The failure of the revenue staff to comply with the provisions of section 42 does not invalidate the transactions covered by mutations. If a dispute arises, the parties involved must substantiate transactions according to the law of evidence.

v) Mutation alone cannot prove the transaction. It must be independently substantiated through cogent, reliable, and convincing evidence. Specifically, in cases involving an elderly, illiterate, and *pardanashin* lady, the onus of proving its legitimacy lies on the party asserting it…The court must be meticulous in such matters. It should be satisfied with clear evidence that the said document was executed by her or by a duly constituted attorney appointed by her with a complete understanding and intelligence regarding the nature of the document.

vi) *Roznamcha Waqiati* does not form a part of the record of rights…no presumption of correctness attaches to the entry made in it.

Conclusion: i) Limitation does not run against a co-sharer/co-owner.

ii) If a person entitled to institute a suit or submit an application has, by means of fraud, been kept from the knowledge of such right or the title on which it is founded, the limitation shall be computed from the time when the fraud first became known to the person injuriously affected thereby.

iii) Mutation does not confer any title.

iv) The failure of the revenue staff to comply with the provisions of section 42 of the Punjab Land Revenue Act, 1967, does not invalidate the transactions covered by mutations.

v) Mutation alone cannot prove the transaction specially in cases involving an elderly, illiterate, and *pardanashin* lady.

vi) *Roznamcha Waqiati* does not form a part of the record of rights.

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35. **Lahore High Court**
Abdul Qayyum Khan Jatoi v. Election Commission of Pakistan etc.
Writ Petition No. 57371 of 2023
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2024LHC172.pdf

Facts: This consolidated order decides instant petition alongwith two other writ petitions as similar issue of election symbol was involved in all these petitions.

Issue: Whether the question of making requests for specific symbols is within time in terms of Section 67 of the Act or not, may be disputed and determined in constitutional jurisdiction of High Court?

Analysis: …Even it may be assumed that dates have wrongly been mentioned as is apparent from applications that said dates have still not arrived and have mistakenly been mentioned in the applications, receipt of any request by petitioners of afore referred symbols within time is not forthcoming on the record and it is disputed

fact whether request was made within time in terms of Section 67 of the Act or not which disputed fact cannot be determined in constitutional jurisdiction of this Court. Consequently, the petitioners have failed to make out a ground for this Court to exercise its constitutional jurisdiction for directing the returning officer to allot symbols sought by the candidates for the purpose of contesting election, more so for the reason that the orders, refusing relief to the petitioners passed by Regional Election Commissioner on the representation of the petitioners, have not been called in question. Hence, no interference is called for.

Conclusion: The question of making requests for specific symbols within time in terms of Section 67 of the Act or not, cannot be disputed and determined in constitutional jurisdiction of High Court.

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36. **Lahore High Court**
Election Appeal No.87 of 2024
Mst. Qaisra Ellahi v Returning Officer etc.
Election Appeal No.89 of 2024
Ch. Pervaiz Ellahi v Returning Officer etc.
Election Appeal No.90 of 2024
Mst. Qaisra Ellahi v Returning Officer etc.
Election Appeal No.91 of 2024
Ch. Pervaiz Ellahi v Returning Officer etc.
Mr. Justice Ch. Abdul Aziz.
https://sys.lhc.gov.pk/appjudgments/2024LHC119.pdf

Facts: The appellants through these election appeals have assailed the decisions of respective Returning Officers wherein, they rejected the nomination papers of appellants.

Issues: i) What is the procedure for proper attestation of declaration by Oath Commissioner?
ii) Whether the nomination papers can be rejected without adhering to the provisions of section 60 of Election Act 2017?
iii) What is the purpose for opening an exclusive account for election expenses?
iv) What is the intention of legislature behind the words exclusive and dedication regarding bank account?
v) How a legal provision can be interpreted?
vi) Whether non mentioning of balance amount in the accounts is a deliberate concealment of assets?
vii) Whether the purpose of nomination papers is to assess the value of assets?
viii) Whether the omission of non-mentioning of expenses of foreign trips in the nomination papers by the candidate is of a serious in nature?

Analysis: i) The procedure of attestation by an Oath Commissioner is mentioned in Rule 14 of Chapter 12 of High Court Rules and Order, Volume-IV. From the perusal of Rule 14 it gets unambiguously cleared that the attestation of the Oath

Commissioner must be at the bottom/end of each declaration or affidavit, more importantly when it comprises upon more than one page.

ii) The nomination papers which are submitted without adhering to the provisions of Section 60 can legitimately be rejected by a Returning Officer under Section 62(9) (c) of the Elections Act, 2017.

iii) A separate account for election expenditure is the only way out for examining the expenses incurred by a candidate during his campaign.

iv) The words exclusive and dedication towards opening of accounts further manifest the intention of legislature aimed at keeping a watch over the wasteful election expenses. The declaration required to be submitted about the exclusive bank account was inserted through Section 60(2) (b) by virtue of an amendment, thus the provision is still an under explored legal question.

v) A legal provision can be scanned through four rules of interpretation which are classified as literal rule, golden rule, mischief rule and purposive rule. If the literal interpretation of a legal provision gives rise to an irrationality, the golden rule of interpretation can be used for ascertaining the legislative intent to give it a practical effect. The third rule of mischief can be used to see the unconstitutionality of the legislation. The purposive rule can be set in motion for ensuring the effectiveness of the law in accordance with the will of Parliament.

vi) The non-mentioning of balance amount in the accounts is a deliberate concealment of assets.

vii) The purpose of nomination papers is not to assess the value of the assets but to examine their description and quantity.

viii) The omission of non-mentioning the expenses of foreign trips by the candidate in nomination papers gains significance when seen in the context that the information about the cost incurred on foreign trips is required to be submitted according to the format of declaration of assets and liabilities and its consequences are mentioned which for all practical purposes are serious in nature.

Conclusion: i) The procedure of attestation by an Oath Commissioner is mentioned in Rule 14 of Chapter 12 of High Court Rules and Order, Volume-IV.

ii) The nomination papers which are submitted without adhering to the provisions of Section 60 can legitimately be rejected by a Returning Officer.

iii) A separate account for election expenditure is the only way out for examining the expenses incurred by a candidate during his campaign.

iv) The words exclusive and dedication towards opening of accounts further manifest the intention of legislature aimed at keeping a watch over the wasteful election expenses.

v) A legal provision can be scanned through four rules of interpretation which are classified as literal rule, golden rule, mischief rule and purposive rule.

vi) The non-mentioning of balance amount in the accounts is a deliberate concealment of assets.

vii) The purpose of nomination papers is not to assess the value of the assets but to examine their description and quantity.
viii) The omission of non-mentioning the expenses of foreign trips by the candidate in nomination papers is a serious in nature.

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37. **Lahore High Court/Appellate Tribunal**
Hafiz Ammar Yasir v. Returning Officer NA-59 and another
Election Appeal No.95 of 2024
Hafiz Ammar Yasir v. Returning Officer PP-22 and another
Election Appeal No.98 of 2024
Hafiz Ammar Yasir v. Returning Officer PP-23 and another
Election Appeal No.99 of 2024
Mr. Justice Ch.Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2024LHC130.pdf

Facts: The titled Election Appeals are disposed of through this single judgment since all are tied with the common knot of similar facts and background in which the Returning Officers rejected the nomination papers of appellant from three different constituencies through separate orders.

Issues: i) Whether abscondence of a candidate for election can be made basis for the rejection of his nomination papers?
ii)Whether failure of a candidate for election to open exclusive account or to dedicate already existing account for each constituency can be made basis for the rejection of his nomination papers?

Analysis: i) It will be a mockery of the election process to let the absconded candidate enter the parliament though he has demonstrated least respect towards the law and courts, especially when no acceptable explanation of his non-surrendering before the process of law is furnished on his behalf, even after gaining knowledge about his status as proclaimed offender. Such case comes within the purview of Article 62 (1) (f) of the Constitution of Islamic Republic of Pakistan, 1973.
ii) Section 132(2) of the Elections Act 2017 provides the limit of election expenditure, whereas section 133 of the Act ibid lays emphasis to open an exclusive account or to dedicate an existing account for the election expenses. The legislative intent of opening an exclusive account or dedicating an existing account in terms of section 133 of the Act ibid manifests that the same is aimed at keeping an eye over the election expenditures of a candidate and to keep it within the limits provided in section 132(2) of the Act ibid. If a candidate is contesting elections from different constituencies without opening of an exclusive account for each of them, he will get leverage of incurring expenditure more than the prescribed limit, which for all practical purposes will frustrate the mandate of sections 132 and 133 of the Elections Act-2017.

Conclusion: i) The abscondence of a candidate for election can be made basis for the rejection of his nomination papers as him not being sagacious and righteous.
ii) The failure of a candidate for election to open exclusive account or to dedicate already existing account for each constituency can be made basis for the rejection of his nomination papers.

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38. **Lahore High Court**
Kashf Foundation through its Chief Executive v. Chief Commissioner Inland Revenue, LTU, Federal Board of Revenue and two others.
W.P. No. 79632/2022
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC7605.pdf

Facts: The Constitutional petition was filed to challenge the order of the Income Tax Department whereby the approval extended to the petitioner as Non-Profit-Organization (NPO), was withdrawn in exercise of powers under Rule 217 of the Income Tax Rules 2002 (Rules, 2002) primarily on the allegation that assets of petitioner entity were employed in a manner to confer private benefit / personal gain to another person.

Issue: Whether provisioning of private benefit by non-profit organization disentitles it from claiming concession and benefits under Income Tax Ordinance, 2001 as well as Rules made thereunder?

Analysis: There is no cavil that petitioner functioned under section 42 of the erstwhile Companies Ordinance, 1984, and carried charitable and not for profits activities still, in the context of provisions of Ordinance, 2001, petitioner was essentially obligated to fulfil conditionalities and requirements prescribed under section 2(36) of the Ordinance, 2001 and those prescribed under Chapter XVII of the Rules 2002. Simplicitor the protection and privileges available under section 42 of erstwhile Companies Ordinance 1984 would not entitle the petitioner to per se claim NPO status under the Ordinance, 2001. Textual reading of section 2(36) of the Ordinance does not suggest immediately realizable benefit but also includes deferred benefits, realized in due course.

Conclusion: Mischief intended to be remedied through the limitations prescribed under section 2(36) of the Ordinance, 2001 and Rule 217(1)(b) of Rules, 2002 was traced and rightly targeted by holding that provisioning of private benefit by non-profit organization disentitled it from claiming concession and benefits under Income Tax Ordinance, 2001 as well as Rules made thereunder in the capacity of a Non-Profit Organization.

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39. **Lahore High Court**
The State v. Ashfaq Hussain
Murder Reference No. 51 of 2022
Ashfaq Hussain v. The State
Criminal Appeal No. 684-J of 2022
Abdul Majeed Shah v. The State
Criminal Appeal No. 683 of 2022
Shafaqat Mehmood v. The State and another
Criminal Revision No. 340 of 2022
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Tariq Nadeem

https://sys.lhc.gov.pk/appjudgments/2023LHC7536.pdf

Facts: The learned Trial Court submitted the murder reference under section 374 Cr.P.C seeking the confirmation or otherwise of the sentence of death awarded to the one of the convicts in case FIR registered under sections 302, 34 P.P.C. and the appellants lodged Criminal appeals assailing their convictions and sentences whereas, complainant has filed Criminal Revision for the conversion of sentence of life imprisonment of one of the accused into sentence of death.

Issues: i) How testimony of a chance witness is to be adjudged?
ii) What can be inferred if the witnesses are not present during identification of dead body of deceased at the time of autopsy and at the time of preparing the inquest report?
iii) Whether it makes the presence of witnesses improbable if their clothes have not been stained with blood while attending the deceased?
iv) Whether mere evidence of call data record is helpful for the prosecution case?
v) What is the legal value of recovery of motorcycle if no registration number, colour, has been described in the FIR?
vi) Whether evidence of a witness whose ocular account has been disbelieved can be helpful as a corroborative piece of evidence?

Analysis: i) In normal course, presumption under the law would operate about absence of a witness from the crime spot. True that in rare cases, the testimony of a chance witness may be relied upon, provided some convincing explanations appealing to prudent mind for his presence on the crime spot are put forth, his testimony would fall within the category of suspect evidence and cannot be accepted without a pinch of salt.
ii) It can be inferred that the witnesses are not present at the time and place of occurrence because had the witnesses been present at the scene of the occurrence at the relevant time, they must have been the witnesses of identification of dead body of deceased at the time of autopsy and at the time of preparing the inquest report.
iii) It is improbable when a person has sustained multiple injuries with fire shot and sharp-edged weapon, blood would not ooze and would not touch the clothes of attending persons. This fact can constrain to hold that eyewitnesses are not present at the time and place of occurrence, otherwise, their clothes must have been stained with blood while attending the deceased, hence, the witnesses of ocular account are not reliable and there is likelihood that they had not witnessed the occurrence.
iv) Mere evidence of call data is not helpful for the prosecution if no voice record transcript has been brought on record. It just shows that they were in telephonically contact and not more than this.
v) Recovery of motorcycle at the pointation of the accused is inconsequential and not helpful to the prosecution case if no registration number, colour, has been described in the FIR.

vi) If evidence of a witness who is witness of ocular account has been disbelieved then his evidence to the extent of corroborative piece of evidence is also not helpful to the prosecution case.

Conclusion: i) In rare cases, the testimony of chance witness may be relied upon, provided some convincing explanations appealing to prudent mind for his presence on the crime spot are put forth.
ii) If the witnesses are not present during identification of deadbody of deceased at the time of autopsy and at the time of preparing the inquest report then this fact shows that they were not present at the time and place of occurrence.
iii) Presence of the witnesses is improbable if the clothes of eye witnesses have not been stained with blood while attending the deceased.
iv) Mere evidence of call data record is not helpful for the prosecution case.
v) Recovery of motorcycle has no legal value if no registration number, colour, has been described in the FIR.
vi) If evidence of a witness who is witness of ocular account has been disbelieved then his evidence to the extent of corroborative piece of evidence is also not helpful to the prosecution case.

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40. **Lahore High Court**
Muhammad Nadeem v. The State etc.
Criminal Appeal No. 151 of 2016.
Mst. Bachal Mai v. The State etc.
Criminal Revision No. 107 of 2016.
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC7518.pdf

Facts: Criminal Appeal was filed by accused against his conviction and sentence passed under sections 302/34 of PPC as well as, Criminal Revision filed by complainant for enhancement of the sentence of the appellant.

Issues: i) What are the parameters to prove the case based on circumstantial evidence?
ii) What is the evidentiary value of extra-judicial confession?
iii) Whether it is safe to rely on footprint tracker's evidence?
iv) What is the nature of medical evidence?
v) Whether the prosecution witnesses once disbelieved with respect to a co-accused, can be relied upon regarding the other co-accused?
vi) What are the consequences where prosecution sets up a motive but fails to prove it?
vii) How is the benefit of doubt given to the accused?
viii) Whether recovery at the pointation of accused is helpful to the prosecution in case no description of such recovered item has been given by the prosecution witnesses?

Analysis: i) The prosecution has heavily relied upon circumstantial evidence, which is normally considered a weak type of evidence. It is well settled by now that in

such like cases, prosecution is required to link each circumstance to the other in a manner that it must form a complete, continuous and unbroken chain of circumstances, firmly connecting the accused with the alleged offence and if any link is missing then obviously benefit is to be given to the accused.

ii) In the given circumstances, the evidence of extra-judicial confession does not bear any credibility and that cannot be permitted to render any sort of help to the case of the prosecution. Even otherwise, the evidentiary value of extra-judicial confession has been declared a weak type of evidence.

iii) Identification of human footprints has not developed as a definite science so far as we have sciences of identification of handwriting and fingerprints, therefore, evidence of foot track described is always treated to be weak type of evidence. (...) Even otherwise, it is by now well- settled law that the evidence of footprints tracker is a weak type of evidence, of all kinds of evidence, admitted in a court this may be regarded as evidence of the least satisfactory character, thus, there is considerable force in the contention that it will be very unsafe to rely on footprint tracker's evidence. At the most, it may be said that the evidence led against the appellant disclosed grave suspicion of guilt but it did not raise that high degree of probability on which a conviction should be based.

iv) It is well settled by now that medical evidence is a type of supporting evidence, which may confirm the prosecution version with regard to receipt of injury, nature of the injury, kind of weapon used in the occurrence but it would not identify the assailants.

v) It is a trite principle of law and justice that once prosecution witnesses are disbelieved with respect to a co-accused then, they cannot be relied upon with regard to the other co-accused unless they are supported by corroboratory evidence coming from any independent source and shall be unimpeachable in nature.

vi) Although, the prosecution is not under obligation to establish the motive in every murder case but it is also well settled principle of criminal jurisprudence that if prosecution sets up a motive but fails to prove it, then, it is the prosecution who has to suffer and not the accused.

vii) When the case against the appellant is replete with doubts then his conviction and sentence cannot be upheld on the basis of such shaky and untrustworthy evidence. The Supreme Court of Pakistan has time and again held that in the event of a doubt, its benefit must be given to the accused not as a matter of grace, but as a matter of right.

viii) With regard to the recovery of motorcycle at the pointation of appellant if no registration number, colour, company name has been described by the prosecution witnesses then the recovery at the pointation of appellant is inconsequential and not helpful to the prosecution case.

Conclusion: i) In a case of circumstantial evidence, prosecution is required to link each circumstance to the other in a manner that it must form a complete, continuous and unbroken chain of circumstances, firmly connecting the accused with the

alleged offence and if any link is missing then obviously benefit is to be given to the accused.
ii) See above in analysis portion.
iii) The evidence of footprints tracker is a weak type of evidence, and this may be regarded as evidence of the least satisfactory character, thus, there is considerable force in the contention that it will be very unsafe to rely on footprint tracker's evidence.
iv) Medical evidence is a type of supporting evidence, which may confirm the prosecution version with regard to receipt of injury, nature of the injury, kind of weapon used in the occurrence but it would not identify the assailants.
v) The prosecution witnesses once disbelieved with respect to a co-accused, cannot be relied upon regarding the other co-accused.
vi) If the prosecution sets up a motive but fails to prove it, then, it is the prosecution who has to suffer and not the accused.
vii) In case of any doubt, the benefit is given to the accused not as a matter of grace, but as a matter of right.
viii) Recovery at the pointation of accused in case no description of such recovered item has been given by the prosecution witnesses is inconsequential and not helpful to the prosecution case.

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41. **Lahore High Court**
Khalida Bibi and another v. The State etc.
Case No. Crl. Misc. No. 885-B/2024
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC150.pdf

Facts: Through this petition under Section 497 Cr.P.C., petitioners have sought post arrest bail in case registered under Sections 371A & 371B PPC.

Issues: i) Whether a man who is running a brothel, will be charged under section 371A or 371B PPC?
ii) Which law specifically prohibits keeping of brothel or allowing any place to be used as a brothel?
iii) Whether a man and a woman found busy in sexual intercourse in a brothel house, can be made subject of section 371A/371B PPC?
iv) Whether the Police can enter into places or resort of loose and disorderly character without warrant?

Analysis: i) When a man is running a brothel, he will not also be charged under section 371A or 371B PPC if he simply offers the service of a prostitute for sexual intercourse to a man, barring a situation when any person is actually found busy in a brothel house for sale, purchase or hiring etc. of a woman with the intent that she may be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be

likely that such person shall at any time be employed or used for any such purpose.

ii) The Punjab Suppression of Prostitution Ordinance, 1961 is in fact the apt law which specifically prohibits keeping of brothel or allowing any place to be used as a brothel.

iii) Willful sexual intercourse by a man and woman shall be viewed as an offence of fornication but not one under section 371A/371B PPC…when a man and a woman are found busy in sexual intercourse in a brothel house, they cannot be made subject of section 371A/371B PPC.

iv) Police can enter into places or resort of loose and disorderly characters without warrant and then depending upon the nature of offence are authorized to initiate criminal action either through registration of FIR for an offence under sections 371A/371B PPC or under the Punjab Suppression of Prostitution Ordinance, 1961, or through complaint under section 203C Cr.P.C. for fornication or investigation with the permission of Magistrate for offences under section 294 PPC.

Conclusion: i) If a man is operating a brothel, he will not be charged under section 371A or 371B PPC solely for offering the services of a prostitute for sexual intercourse to a man.

ii) The Punjab Suppression of Prostitution Ordinance, 1961 is in fact the apt law which specifically prohibits keeping of brothel or allowing any place to be used as a brothel.

iii) When a man and a woman are found busy in sexual intercourse in a brothel house, they cannot be made subject of section 371A/371B PPC.

iv) Police can enter into places or resort of loose and disorderly characters without warrant and then depending upon the nature of offence are authorized to initiate criminal action.

LATEST LEGISLATION / AMENDMENTS

1. Notification No. 14/EXEC-III, dated 02.01.2024 is issued by the Provincial Police Officer vide which rules 22.3(2), 22.48 (1), 24.5 (1), 25.53 (1) &(2), 25.54 (1) & (2), form 24.5(1),and sub rules (4)&(5), 25.18 of Police Rules 1934 are substituted whereas rules 22.45, 24.1, 25.23 are amended.
2. Notification No. SOR-III (S&G) 1-10/2007 issued by the Regulations Wing of Services and General Administration Department regarding amendment in the Punjab Social welfare and Bait-ul-Maal Department Directorate Service Rules, 2009 in the schedule at Sr.No. 4 in column No. 3 & column No. 7 and in column no. 3 at Sr. No. 11.

SELECTED ARTICLES

1. **MANUPATRA**
https://articles.manupatra.com/article-details/Furthering-the-Rights-of-Good-Samaritans

Furthering the Rights of Good Samaritans by Nyaaya

Motor vehicle accidents require immediate rescue and medical care. which people who are closest to the scene of the accident can provide. The support from bystanders can improve the chances of survival of a victim in the first hour of the injury, also known as the Golden Hour. To make sure that the victims of road accidents receive help from the bystanders without the bystanders having any fear of harassment, the Supreme Court has given effect to the Good Samaritan Law. According to this law, a Good Samaritan is a person who voluntarily, in good faith and without expectation of any reward helps a victim in getting emergency medical or non-medical care or assistance at the place where the accident takes place. This includes taking the victim to the hospital.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/Business-Efficacy-Provision-A-Double-Edged-Sword

Business Efficacy Provision A Double Edged Sword by Ashwini Panwar (Mr) and Priyanshi Aggarwal (Ms), Alaya Legal Advocates

Contracts are executed generally for 'business efficacy', yet often, 'business efficacy' may require a review of the already executed contract. The above statement sounds like a loop and would end up in a loop unless some parameters for defining 'business efficacy' are crystallized. Often, even though the executed contract may contain clearly drafted provisions, the affected party may wish to creatively introduce 'new meaning' on grounds including 'implied understanding', 'business efficacy' or 'business necessity'.

3. **MANUPATRA**
https://articles.manupatra.com/article-details/Judicial-Appointments-In-India-And-Pakistan-The-Need-For-Responsive-Judicial-Review-And-Institutional-Dialogue

Judicial Appointments In India And Pakistan The Need For Responsive Judicial Review And Institutional Dialogue by Rushil Batra

Judicial Appointments were and continue to remain a hotly contested issue even after four landmark pronouncements by the Supreme Court. In the latest judgement on judicial appointments in 2015, the Supreme Court of India ('SCI'), in SCORA v. Union of India declared the National Judicial Appointment Commission, brought in by the 99th Amendment, as unconstitutional for violating the basic structure. The judgement has been highly criticised by scholars for ignoring the principles of separation of powers and ignoring "parliamentary supremacy" by striking down a constitutional amendment in toto. Interestingly, the Supreme Court of Pakistan ('SCP') was faced with a similar

question in Nadeem Ahmed regarding the constitutional validity of the 18th Amendment, which, inter alia, introduced a Judicial Appointments Commission. The SCP acted in stark contrast to the SCI by engaging in institutional dialogue as opposed to striking down the Amendment. This paper attempts to provide multiple suggestions and ways as to how the SCI could have decided the case differently by drawing on jurisprudence from Pakistan. The article attempts to compare and contrast the approach adopted by the SCI with that of the SCP and argues for engaging in institutional dialogue on questions like judicial appointments, which do not form the "democratic minimum core" in a democracy.

4. MANUPATRA

https://articles.manupatra.com/article-details/Constitutional-Jurisdictions-In-The-ICT-Revolution-Looking-For-Legitimacy-Through-Communication

Constitutional Jurisdictions In The ICT Revolution Looking For Legitimacy Through Communication by Tania Groppi

The article discusses the growing importance of the communication of constitutional and supreme courts with public opinion and how new technologies are transforming this relationship. It highlights the need for an empirical analysis of court communication, due to the scarcity of norms regulating these activities. The author examines the generators. The object, the tools, and the recipients of the communication of 27 constitutional jurisdictions worldwide. The research was conducted using three types of tools. First, an examination of the courts' websites and social media platforms. Secondly, a dedicated questionnaire was submitted from scholars of the respective jurisdictions. Finally, the publications on the subject were considered, although they are rather limited and sporadic. The main findings of the research are that in the last fifteen years, almost all the analysed courts have changed their communication strategies. In many cases, these changes have been promoted by some prominent chief justices, and they covered both the communication tools (there was a shift from communication through websites and press releases to social networks), its content (which extended from judicial to extrajudicial activities, and especially to the promotion of constitutional literacy), and the recipients of the communication (which are more and more the general public).

5. THE NATIONAL LAW REVIEW

https://www.natlawreview.com/article/boardriders-minority-lenders-win-round-one

Boardriders: Minority Lenders Win Round One by: Peter J. Antoszyk , David M. Hillman , Michael T. Mervis , Patrick D. Walling , Matthew R. Koch of Proskauer Rose LLP

A common yet contentious liability management strategy is an "uptier" transaction, where lenders holding a majority of loans or notes under a financing agreement seek to elevate or "roll-up" the priority of their debt above the previously pari passu debt held by the non-participating minority lenders. In a recent decision in the Boardriders case,

the minority lenders defeated a motion to dismiss various claims challenging an uptier transaction..

6. THE NATIONAL LAW REVIEW

https://www.natlawreview.com/article/harnessing-power-ai-law-firm-marketing-and-business-development

Harnessing the Power of AI in Law Firm Marketing and Business Development by Stefanie M. Marrone of Stefanie Marrone Consulting

In an era where technology continually reshapes business landscapes, law firms are increasingly turning towards Artificial Intelligence (AI) to enhance their marketing and business development strategies. AI offers a myriad of possibilities for law firms to not only streamline operations but also provide more personalized client experiences. Here's how AI is revolutionizing the legal sector and how your law firm can use it to your advantage.

7. THE NATIONAL LAW REVIEW

https://www.natlawreview.com/article/crucial-importance-updating-documents-after-divorce

The Crucial Importance of Updating Documents After Divorce by Jennifer Weisberg Millner of Stark & Stark

Divorce can be a challenging and emotionally draining experience, leaving individuals with numerous legal and personal matters to resolve. Amidst all the turmoil, it is vital for people to understand the significance of updating beneficiaries on various accounts and financial instruments. Failing to update beneficiaries after a divorce is over can have serious consequences, as illustrated in the recently decided case of In the Matter of the Estate of Michael C. Jones.

8. THE OXFORD ACADEMIC

https://academic.oup.com/ejil/advance-article/doi/10.1093/ejil/chad062/7510879

A Love Triangle? Mapping Interactions between International Human Rights Institutions, Meta and Its Oversight Board by Anna Sophia Tiedeke

Three years ago, the Oversight Board commenced its work 'to make principled, independent, and binding decisions … based on respect for freedom of expression and human rights' for Meta's platforms Facebook and Instagram. From the very beginning, the vocabulary employed to talk about the Oversight Board was laden with court metaphors. Wary that these metaphors have stirred legal analysis into a specific direction, we move away from trying to fit the Oversight Board within established institutional categories. Instead, we shift the focus from institutions to interactions – that is, to the 'in-between'. Rather than continuing to debate what the Oversight Board is, we focus on what the Oversight Board does. Our study maps different stages and modes of

interaction between Meta, the Oversight Board and international human rights institutions. We show how different actors carefully craft entry points for constructing their respective semantic authority and what kind of strategies they pursue to contest semantic authority of others. Thereby, we uncover the first traces of emerging conversations between Meta, the Oversight Board and international human rights institutions and highlight who is included and excluded and who refuses to participate or to respond. With our intervention, we intend to offer empirically grounded insights into the dynamics at play and paint a more detailed picture of the various roles that novel actors, such as Meta and the Oversight Board, are beginning to assume in the protection of international human rights online.

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-02-2024 to 15-02-2024)

A Summary of Latest Judgments Delivered by the Supreme Court of Pakistan & Lahore High Court, Legislation/Amendment in Legislation and important Articles

Prepared & Published by the Research Centre Lahore High Court

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Mubarik Ahmad Sani v. The State and another
Criminal Petitions No.1054-L and 1344-L of 2023
Mr. Justice Qazi Faez Isa, HCJ, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/cr.p_1054_l_2023.pdf

Facts: The petitioner sought the deletion of certain charges from the Charge framed against him in a Case FIR registered for offences under section 7 read with section 9 of the Punjab Holy Quran (Printing and Recording) Act, 2011, section 298-C and section 295-B of the Pakistan Penal Code, 1860.

Issues: i) Whether a person can be charged for something which was not an offence when it was done?
ii) Where an under trial prisoner can be detained beyond the period with which he can be punished, on the ground of non-conclusion of trial?

Analysis: i) The Constitution of the Islamic Republic of Pakistan ('the Constitution') stipulates that a person cannot be charged for something which was not an offence when it was done.
ii) Trials in respect of offences where the maximum sentence of imprisonment is relatively short must be conducted promptly or the accused should be granted bail….Article 9 of the Constitution stipulates that a person shall not be deprived of his liberty save in accordance with law; the law no longer permits his detention. And, Article 10A of the Constitution guarantees right to a fair trial and due process, which too the petitioner is now being denied. In addition to the violation of these two Fundamental Rights is the overarching right stipulated in Article 4 of the Constitution, 'To enjoy the protection of law, and, to be treated in accordance with law is the inalienable right of every citizen.' The petitioner is no longer being treated in accordance with law because while waiting for the conclusion of his trial he has remained imprisoned for a period much longer than what he could have been punished for if he is found guilty.

Conclusion: i) A person cannot be charged for something which was not an offence when it was done.
ii) An under trial prisoner cannot be detained beyond the period with which he can be punished, on the ground of non-conclusion of trial.

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2. **Supreme Court of Pakistan**
Nadir Khan v. Qadir Hussain & others
Civil Appeal No. 499 of 2017
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Mussarat Hilali.
https://www.supremecourt.gov.pk/downloads_judgements/c.a._499_2017.pdf

Facts: Through this appeal, the Appellant has assailed the judgment of the High Court, whereby a preliminary decree passed by the Civil Judge in favour of the Appellant and against the Respondents was set aside by the high Court in the RFA filed by the Respondent.

Issues: i) What is Partnership at will?
ii) What is the pre-condition of retirement of a partner in case of Partnership at will?
iii) Whether fulfillment of requirements under Section 32 (1) (c) and Section 32 (2) of the Partnership Act, 1932 absolves the retiring partner from the liabilities against third party?
iv) What if the law requires a thing to be done in a particular manner?

Analysis: i) Since in the instant case no deed of contract has been brought on record determining the period of partnership and determination of partnership, therefore, the High Court observed that the provision of Section 7 of the Act would apply, which reads as under:"7. Partnership at will.—Where no provision is made by contract between the partners far the duration of their partnership, or for the determination of their partnership, the partnership is "partnership at will".(…) The High Court has rightly declared the nature of partnership as partnership at will under Section 7 of the Act.
ii) Section 32 of the Act lays down the procedure of retirement from a partnership at will (…) Section 32 (1) (c) of the Act explicitly mentions the pre-condition of issuing a notice by a retiring partner in writing to all other partners of his intention to retire.
iii) Further, even if the Respondent had fulfilled the requirements of Section 32 (1) (c) and Section 32 (2) of the Act, he would still not be discharged from the liabilities against third party until a public notice is given by him or by any partner of the reconstituted firm as required under Section 32 (3) of the Act.
iv) When the law requires that a particular thing should be done in a particular manner it must be done in that manner and not otherwise.

Conclusions: i) Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "partnership at will".
ii) The issuance of notice by a retiring partner in writing to all other partners of his intention to retire is pre-condition of retirement of a partner in case of Partnership at will.
iii) The retiring partner would still not be discharged from the liabilities against a third party until public notice is given by him or by any partner of the reconstituted firm as required under Section 32 (3) of the Act.
iv) When the law requires that a particular thing should be done in a particular manner it must be done in that manner and not otherwise.

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3. **Supreme Court of Pakistan**
The Punjab Employees Social Security Institution, Lahore through its Commissioner etc. v Javed Iqbal etc.
Civil Petition No.2007-L
The Director General, Punjab Employees Social Security InstItution, Lahore etc. v Javed Iqbal etc.
CP No.2008-L
Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2007_l_2023.pdf

Facts: Through the instant petitions, the petitioners have assailed the judgment passed in writ petitions by learned Judge of the learned High Court wherein the respondent was reinstated in service from the date of his dismissal with all back benefits and another writ petition was disposed of by the same bench with the direction to take up the matter regarding regularization of services of the respondent with relevant authority and upon fulfilment of codal formalities shall ensure decision within a period of six months positively.

Issues: i) How allegation of poor performance of a civil servant can be proved?
ii) Whether it is the mala fide of competent authority to initiate all penal actions against a civil servant after filing of writ petitions and contempt petitions/applications?
iii) How allegation of not following the duty timing properly by a civil servant can be proved?

Analysis: i) The fate of allegation of poor performance of a civil servant can only be decided after conducting a thorough probe/regular enquiry. The said allegation stands belied if remarks recorded by the Reporting Officer in the Personal Evaluation Reports shows his performance as satisfactory.
ii) The conduct of the competent authority establishes mala fide to initiate all penal actions against a civil servant after filing of writ petitions and contempt petitions/applications.
iii) It must be proved with specifying days when the civil servant did not attend the office in time lead/support. Moreover, the Reporting Officer has recorded such remarks in the column of "Punctuality" of Personal Evaluation Report.

Conclusion: i) The fate of allegation of poor performance of a civil servant can only be decided after conducting a thorough probe/regular enquiry.
ii) The conduct of the competent authority establishes mala fide to initiate all penal actions against a civil servant after filing of writ petitions and contempt petitions/applications.
iii) It must be proved with specifying days when the civil servant did not attend the office in time lead/support.

4. **Supreme Court of Pakistan**
Mujahid Hussain son of Ghulam Muhammad and another v. The State through Prosecutor General, Punjab, Lahore and another
Criminal Petition No.1329 of 2023
Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1329_2023.pdf

Facts: Through this petition filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, the petitioners assailed the order of High Court, wherein their post arrest bail was declined.

Issues: i) Whether the liberty of a person is a precious right?
ii) What is the established principle of criminal law where a case has two versions?
iii) What is the perception and discernment of the expression further inquiry?
iv) What is the purpose of setting the law into motion in the criminal cases?
v) What is a well-settled principle of the administration of justice in criminal law regarding accused?
vi) What is the basic philosophy of criminal jurisprudence regarding the duty of prosecution?

Analysis: i) It is a settled law that liberty of a person is a precious right, which has been guaranteed under the Constitution of Islamic Republic of Pakistan, 1973 and the same cannot be taken away merely on bald and vague allegation
ii) It is the established principle of criminal law that where there is a case of two versions narrated before court, it squarely falls within the ambit of section 497(2) Cr.PC.
iii) The perception and discernment of the expression further inquiry is a question which must have some nexus with the result of the case and it also pre-supposes the tentative assessment which may create doubt with respect to the involvement of accused in the crime.
iv) The raison d'etre of setting the law into motion in the criminal cases is to make an accused face the trial and not to punish an under trial prisoner or let him rot behind the bars.
v) It is a well-settled principle of the administration of justice in criminal law that every accused is innocent until his guilt is proved and this benefit of doubt can be extended to the accused even at bail stage, if the facts of case so warrant.
vi) The basic philosophy of criminal jurisprudence is that prosecution has to prove its case beyond reasonable doubt and this principle applies at all stages including pre-trial and even at the time of deciding whether accused is entitled to bail or not which is not a static law but growing all the time, moulding itself according to the exigencies of the time.

Conclusion: i) It is a settled law that liberty of a person is a precious right.
ii) It is the established principle of criminal law that a case having two versions, it

squarely falls within the ambit of section 497(2) Cr.PC.
iii) The perception and discernment of the expression further inquiry is a question which must have some nexus with the result of the case.
iv) The purpose of setting the law into motion in the criminal cases is to make an accused face the trial and not to punish an under trial prisoner.
v) It is the well-settled principle of the administration of justice in criminal law that every accused is innocent until his guilt is proved.
vi) The basic philosophy of criminal jurisprudence is that prosecution has to prove its case beyond reasonable doubt.

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5. **Supreme Court of Pakistan**
Mehboob Hassan v. Akhtar Islam etc.
Crl. Petition No.235-L of 2015
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._235_l_2015.pdf

Facts: On conclusion of trial in criminal case registered under sections 365-A, 201, 34 PPC and section 7 of the Anti-Terrorism Act, 1997, the respondents were convicted and sentenced. However on their appeal, they were acquitted of the charge by the High Court through the impugned judgment, hence this petition for leave to appeal.

Issues: i) What is legal status of the identification parade, wherein neither the role attributed to accused stated by the witnesses identifying accused nor requisite precautions are taken by police to conceal identity of the accused prior to identification parade?
ii) Whether complainant, instead of alleged abductee, of FIR pertaining offence of abduction has *locus standi* to challenge the judgment acquitting the accused?
iii) What is significance and object of powers under sections 265-K and 249-A, of the Code of Criminal Procedure, 1898?
iv) What is the constitutional requirement with regard to providing the justice in criminal cases?

Analysis: i) It is necessary for the witnesses to give some features of accused with their specific role during the investigation, before the identification parade, enabling the Magistrate to manage the person of identical features for the purpose of including them in identification parade as dummies. Moreover, in order to maintain secrecy, it is the responsibility of the concerned police to ensure that the witness should not have a sight of an accused while in police station lock-up or in police custody.
ii) It is a fundamental legal principle that only an aggrieved person can challenge a judgment or order of acquittal.
iii) It is obligatory upon the Trial Court to ensure constitutional guarantee of life, liberty, fair trial and due process enshrined in Articles 9 and 10-A of the

Constitution of Islamic Republic of Pakistan, 1973. Section 265-D of the Code of Criminal Procedure, 1898 provides that the Trial Court should consider all the available material, then it shall frame in writing a charge against the accused. If no charge could be framed or there is no probability of the accused being convicted of the charge on the basis of the material available on the record, the Trial Court has power under sections 265-K and 249-A, of the Code ibid to acquit an accused at any stage of the case, either on its own motion or upon an application in this behalf filed by an accused, after providing opportunity of hearing to all concerned.

iv) The famous legal maxim that justice delayed is justice denied, is often used when unjustified delay occurs in disposal of disputes. When the legal machinery fails to deliver justice within a reasonable time, it not only violates the constitutional mandate, but also leads to frustration.

Conclusion: i) Where the role attributed to accused is not stated by the witnesses identifying accused in identification parade and the police has not taken up requisite precautions to conceal identity of accused prior to conducting identification parade, then the identification parade in the circumstances would not be in line with Article 22 of the Qanoon-e- Shahadat Order, 1984, hence, is of no evidentiary value and cannot be relied upon.

ii) In the case pertaining offence of abduction, only the abductee being an aggrieved person may challenge the judgment acquitting accused and the complainant has no *locus standi* to do so.

iii) Powers under sections 265-K and 249-Aof the Code of Criminal Procedure, 1898 are mandatory in nature, which must be exercised judiciously in order to prevent the abuse of process of law and frivolous and malicious litigation.

iv) An inexpensive and timely justice is a requirement of the Constitution under Article 37(d), which must be observed by all stakeholders in all circumstances without any excuse.

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6. **Supreme Court of Pakistan**
Mir Muhammad s/o Mir Hassan v. The State through Prosecutor General Sindh
Criminal Petition No.705 of 2023
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._705_2023.pdf

Facts: The petitioner sought pre-arrest bail in a criminal case registered against him and others for offences under sections 324, 147, 148, 149, 504 PPC.

Issues: i) Whether the jurisdictional extent of intervention by the court in the course of the investigation is restricted and limited?

ii) What are the elementary and indispensable constituents for enlarging the accused on pre-arrest bail?

Analysis: i) It is a well settled exposition of law that investigating crimes is the responsibility of the police, and the IO performs a vital and dominant role in this regard. It is not the duty of the Court to monitor the investigation unless the investigation conducted by IO appears to be mala fide, an abuse of power, or in violation of the relevant provisions of the Cr.P.C., therefore, the jurisdictional extent of intervention by the court in the course of the investigation is restricted and limited.

ii) The remedy of pre-arrest bail is meant to safeguard and shelter an innocent person who has been dragged into a case with mala fide intention or ulterior motives by the complainant or prosecution. While entreating the exercise of discretion of the Court for the grant of anticipatory bail, the accused is obligated to demonstrate that the case against him is based on mala fide and must divulge reasonable grounds to substantiate that he is not guilty of the offence and that sufficient grounds are available to lead further inquiry. The concepts of mala fide, ulterior motives or false implication are elementary and indispensable constituents for enlarging the accused on pre-arrest bail with the imminent apprehension of his arrest if the bail is declined.

Conclusion: i) The jurisdictional extent of intervention by the court in the course of the investigation is restricted and limited.

ii) The concepts of mala fide, ulterior motives or false implication and imminent apprehension of his arrest are elementary and indispensable constituents for enlarging the accused on pre-arrest bail.

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7. **Supreme Court of Pakistan**
Muhammad Ishaque etc. v. M/s Zeal Pak Cement Factory Ltd.
Civil Petitions No.175-177-K of 2022
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._175_k_2022.pdf

Facts: Civil Petitions for leave to appeal were filed by the petitioners, directed against an order passed by the High Court of Sindh whereby the High Court disposed of an application moved by the petitioners under Section 3 and 4 of the Contempt of Court Ordinance, 2003, for non-compliance of the judgment rendered by the divisional bench of the Sindh High Court in a Constitution Petition wherein directions were issued by the High Court for reinstatement of the petitioners in service with all benefits.

Issues: i) What are the types of the Contempt of Court?

ii) Whether a court can relieve or emancipate the contemnors on the notion that substantial compliance of its judgment/order has been made?

Analysis: i) Under Article 204 of the Constitution of Islamic Republic of Pakistan, 1973 ("Constitution"), both the Supreme Court and a High Court have powers to punish

any person who (a) abuses, interferes with or obstructs the process of the Court in any way or disobeys any order of the Court; (b) scandalizes the Court or otherwise does anything which tends to bring the Court or a Judge of the Court into hatred, ridicule or contempt; (c) does anything which tends to prejudice the determination of a matter pending before the Court; or (d) does any other thing which, by law, constitutes contempt of the Court. The powers conferred by this Article may be regulated by law and, subject to law, by rules made by the Court. According to the Contempt of Court Ordinance, 2003 ("Ordinance"), Section 2 of the Ordinance (Definitions Clause) delineates the nature and gravity of contempt of Court such as (a) "civil contempt", which means the wilful flouting or disregard of (i) an order, whether interim or final, a judgment or decree of a Court; (ii) a writ or order issued by a Court in the exercise of its Constitutional Jurisdiction; (iii) an undertaking given to, and recorded by, a Court; (iv) the process of a Court; (b) "criminal contempt", which means the doing of any act with intent to, or having the effect of, obstructing the administration of justice; (c) "judicial contempt", which means the scandalization of a Court and includes personalized criticism of a judge while holding office. Whereas, Section 3 of the Ordinance provides that whoever disobeys or disregards any order, direction or process of a Court, which he is legally bound to obey; or commits a wilful breach of a valid undertaking given to a Court; or does anything which is intended to or tends to bring the authority of a Court or the administration of law into disrespect or disrepute, or to interfere with or obstruct or interrupt or prejudice the process of law or the due course of any judicial proceedings, or to lower the authority of a Court or scandalize a Judge in relation to his office, or to disturb the order or decorum of a Court, is said to commit "contempt of Court".

ii) A noteworthy and acclaimed characteristic of the canons of jurisdiction should not have been relegated, which is that neither should the Court embark on the jurisdiction not vested in it by law, nor should it abdicate or renounce a jurisdiction so vested in it by law. If the judgment of High Court is not implemented in its letter and spirit, it is evident that the High Court ought to have taken all necessary steps for compliance of its judgment or order to alleviate the suffering of the beneficiary, rather than divesting or repudiating its jurisdiction as vested under Article 204 of the Constitution read with the provisions of the Ordinance.…The Court has to assess the contempt and its gravity and may also purge it if an unqualified apology is tendered by the contemnor. However, there is no concept or parameter to relieve or emancipate the contemnors on the notion that substantial compliance has been made …the High Court must have ensured the due compliance of its own judgment rather than instructing the petitioners to seek an appropriate remedy for compliance or implementation of judgment. The Court has to evaluate the compliance of its judgment in its entirety and not the ratio or percentage of compliance. The denial of exercising jurisdiction proactively in the contempt proceedings for revitalising and assuring the compliance of judgment not only rendered the main judgment worthless and inconsequential, but for all practical purposes, also undermined the writ of the

Court and water down the efficacy of the orders passed by different benches … for ensuring the compliance.

Conclusion: i) There are three types of Contempt of Court, namely, the "Civil Contempt", "Criminal Contempt" and "Judicial Contempt".
ii) A court cannot relieve or emancipate the contemnors on the notion that substantial compliance of its judgment/order has been made.

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8. **Lahore High Court,**
Mian Shabbir Asmail v. Election Commission of Pakistan through Secretary and others.
Writ Petition No.4592 of 2024
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC236.pdf

Facts: This Writ Petition is filed with the prayers that: (i)Section 215 of the Election Act, 2017 be declared as *ultra-vires* Articles 17, 9, 14, 4, 5, 227, 2-A and Objective Resolution of the Constitution of Islamic Republic of Pakistan, 1973 as well as in violation of the judgments of the superior courts (ii)any power wrongly and arbitrarily assumed and illegally exercised or act of taking away fundamental rights without due process of law by the Election Commission of Pakistan be declared void *ab initio* in terms of the Article 8 of the Constitution of the Islamic Republic of Pakistan, 1973 (iii) it be declared that 'election symbol' of the petitioner's party has been withdrawn in violation of fundamental rights of the petitioner available to the him under Articles 17 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973.

Issues: i) When subordinate legislation is declared as *ultra vires* the parent statute or in conflict with any other law?
ii) Whether unreasonableness may be one of the grounds to declare subordinate statute/rule as *ultra vires*?
iii) What laws govern the formation of association and unions?

Analysis: i) Constitution is the supreme law of a country. All other statutes derive power from the constitution and are deemed subordinate to it. If any legislation over-stretches itself beyond the powers conferred upon it by the Constitution, or contravenes any constitutional provision, then such laws are considered unconstitutional or *ultra vires* the Constitution. The term *'ultra vires'* literally means "beyond powers" or "lack of power".
ii) Bye-laws can be struck down as *ultra vires* on the five main grounds: (a) The statutory procedure, prescribed for making them, has not been followed; (b) They are repugnant to a provision of some other Statute; (c) They conflict with the Parent Act itself; (d) They are uncertain and (e) They are unreasonable.
iii) Every citizen of the country has a right to form association or unions but the said formation has been subjected to some restrictions, imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.

Conclusion: i) It is a settled principle of interpretation that if subordinate legislation is directly repugnant to the general purpose of the parent Act, which authorizes it, or indeed is repugnant to any settled and well established principle of statute, it is *ultra vires*.
ii) The unreasonableness is one of the grounds on which subordinate statute/rule can be declared *ultra vires*.
iii) The formation of association and unions are governed by laws, enacted and promulgated, to regulate such associations and unions.

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9. **Lahore High Court**
Mariam Sajjad v. Prof. Dr. Rasool Ahmed Chaudhary
RFA.No.70634/2023, First Appeal No.74489 of 2023
Mr. Justice Masud Abid Naqvi, Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2024LHC205.pdf

Facts: Through these appeals under Section 96 CPC, the plaintiff and defendant have separately challenged the judgment and decree passed by the learned Civil Judge, whereby the suit for recovery of Rs.750 Million by way of damages filed by the appellant was partially decreed to the extent of Rs.50,00,000/-.

Issues: i) What duties a Doctor owes to his patient when he is consulted by a patient and what are the consequences of its breach?
ii) Whether an aggrieved patient can sue against a doctor for recovery of damages in Civil Court particularly when remedy of complaint has already been availed before the Punjab Healthcare Commission?
iii) What is litmus or standard or mode for assessment of compensatory damages in medical negligence?

Analysis: i) When a Doctor is consulted by a patient, the former, namely, the Doctor owes to his patient certain duties which are (a) a duty of care in deciding whether to undertake the case; (b) a duty of care in deciding what treatment to give; and (c) a duty of care in the administration of that treatment. A breach of any of the above duties may give a cause of action for negligence and the patient may on that basis recover damages from his Doctor.
ii) Punjab Healthcare Commission Act, 2010 has been promulgated to improve the quality of healthcare services. The functions and powers of the Punjab Healthcare Commission have been given in Section 4 of the Act ibid and sub-section (7) of Section 4 of the Act ibid deals with the complaint of an aggrieved person. (…) The Punjab Healthcare Commission can investigate into the allegations of malpractice or failure on the part of healthcare service provider and can announce order in this regard but it has no jurisdiction to grant damages to a person affected by such service whereas said relief can only be granted by the Civil Court if an aggrieved person proves his case. Furthermore, under the Act ibid even no bar has been imposed upon an aggrieved person to approach Civil

Court for claim of damages against any healthcare service provider. As such the argument of learned counsel for the respondent have no force and same is repelled.

iii) The cases related to medical malpractice are dealt with by courts under "Law of Torts". Pakistan follows English Law for deciding the cases of medical malpractice. The claims of medical malpractice are mostly brought in respect of death, personal injuries and financial loss suffered due to the negligence. The principles applied for the calculation of damages in medical negligence cases are similar to one applied in general cases of negligence in tort. While granting claim for damages the court of law and equity normally adhere to the following principles: i) Reasonable and fair monetary compensation for the injury caused. ii) Small amount of damages can be granted under the head of pain and suffering. iii) Loss of Amenity includes the loss of activities of claimant, his job satisfaction, hobbies, and recreational activities. Court will consider all these losses during award of damages. This will include in the damage even if the patient is unconscious and does not realize the loss of all these activities. iv) Medical Expenses: A patient can recover medical and other expenses as damages. Likewise, damages can be granted for traveling costs and additional housing or adapting accommodation for the special needs of the patient. v) Loss of Earning must be estimated for two periods. First: the lost incomes due to the medical malpractice till the date of estimation. Secondly, future loss of earnings. Calculating the prospective loss of earning is a difficult question for the court. vi) Pecuniary Loss: A patient who is a victim of medical negligence usually suffers from pecuniary cases such as, medical expenses, traveling expenses, the cost of equipment bought because of the injury, loss of earning, future loss of earning and cost of hiring someone else for performing chores which the patient is no longer able to perform due to the injury caused to him because of medical negligence. vii) Pain and Suffering & non pecuniary loss:- A patient can be awarded damages for the pain and suffering as a result of injury because of medical malpractice. If patient faces humiliation, discomfort or any part of his body got disfigured or his life expectancy has been significantly reduced because of the negligent behavior of the medical practitioner, he is entitled to damages. Similarly, if a patient develops any psychiatric condition due to the injury, it will be reflected in the award of damages.

Conclusions: i) See above analysis portion.

ii) Aggrieved patient can sue against a doctor for recovery of damages and Civil Court has the jurisdiction to try the suit and award compatible damages.

iii) See above analysis portion.

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10. **Lahore High Court**

Ijaz Ahmad Khan v. Muhammad Bootay Khan deceased through his legal heirs etc.

Civil Revision No.78446-2023

Mr. Justice Masud Abid Naqvi

https://sys.lhc.gov.pk/appjudgments/2023LHC7663.pdf

Facts: The petitioner/applicant filed an application under Section 12(2) CPC to challenge the order & decree with the averments that order & decree is result of fraud, mis-representation having no effect upon the rights of the petitioner and further prayed that judgment & decree passed by learned trial court may also be set aside.

Issues: i) What is the object of law of limitation?
ii) Whether the limitation is a mere technicality?
iii) Whether the presumption of truth is attached to the record of the court?

Analysis: i) Law of limitation is considered to be preventive in nature which serves as a major deterrent against the factors and elements which can affect peace, tranquillity and due order of State and society and bar of limitation in litigation also brings forth valuable rights in favour of other party. The law of limitation requires that a person must approach a court of law and take legal remedies with due care, diligence and within the time provided by the law.
ii) The Supreme Court of Pakistan has held that the question of limitation cannot be termed to be a mere technicality and cannot be ignored while deciding cases.
iii) Presumption of truth is attached to the record of the court under Article 129 (e) of the Qanun-e-Shahadat Order, 1984 and Article 150 of the Constitution of Islamic Republic of Pakistan, 1973. Authenticity of the judicial record cannot be doubted without any solid proof and only on the oral arguments of the learned counsel.

Conclusion: i) The law of limitation requires that a person must approach a court of law and take legal remedies with due care, diligence and within the time provided by the law.
ii) The question of limitation cannot be termed to be a mere technicality and cannot be ignored while deciding cases.
iii) Presumption of truth is attached to the record of the court under Article 129 (e) of the Qanun-e-Shahadat Order, 1984 and Article 150 of the Constitution of Islamic Republic of Pakistan, 1973.

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11. **Lahore High Court**
Kashif Law Book House v. Federation of Pakistan & others
W.P. No. 34660 of 2020
Mr. Justice Shahid karim
https://sys.lhc.gov.pk/appjudgments/2024LHC254.pdf

Facts: The instant petition along with connected challenged the paragraph (5) (2) (a) of the Imports Policy Order, 2020 dated 25.09.2020 and issue in both the petitions converge on the same challenges regarding import of goods of the Indian origin of imported from India.

Issues: i) What is significance of words ‘of goods of any description’ as used in section 3

of 1950 Act?

ii) Whether it is discretion of Federal Government to conclude that import of books have adverse bearing on national security or interest of the country?

iii) Whether a complete prohibition of import of goods would be an infringement of rights guaranteed by Article 18 of the Constitution?

iv) Whether right guaranteed by Article 19 of Constitution is linked to and dependent upon the right to read and receive information and is there and restriction upon such right?

v) Whether question relating to foreign affairs and national security can be adjudged through courts?

vi) Whether power to issue orders under Section 3(1) of the 1950 Act is absolute?

vii) Whether decision of ban on import of books can be reviewed in the narrow prism of rationality and impropriety?

Analysis: i) Indubitably, greater significance must attach to the words 'of goods of any specified description' as used in section 3 of 1950 Act. The true construction must be that this does not confer a sweeping power on the Federal Government to prohibit import or export of all goods from any country and the power lies merely to prohibit or restrict 'goods of any specified description'. As a matter of policy of the law, the Federal Government should only prohibit specified goods and simultaneously retain power to review the prohibition on a case to case basis. Both these connotations can be culled out from a reading of section 3 of the 1950 Act.

ii) In short, this is a matter which ought to be decided on a case to case basis and cannot be determined generally by use of the powers to impose a complete ban without regard to individual cases. For instance, the petitioners in these cases may, if the circumstances were right, apply to the Federal Government for import of specific books regarding which an analysis may be carried out by the Federal Government and upon such analysis may conclude that such books have no adverse bearing on the national security or interest of the country and may be allowed to be imported. Such discretion should continue to be retained by the Federal Government. A reading of section 3 of the 1950 Act holistically and in the entire context of the law would also lead to the inference that it is intended that the Federal Government retain its power to decide upon the prohibitions and restrictions or otherwise to control the import and export of goods in individual cases coming up before it and for which a procedure may be prescribed by rules.

iii) The intention to be gathered from a reading of section 3 leads to the ineluctable conclusion that a complete prohibition of import of goods would be an infringement of rights guaranteed by Article 18 of the Constitution. The Federal Government is merely empowered to regulate the trade or profession by a specific system which is envisaged under sub-section (2) of section 3 of the 1950 Act. It could be a condition of the license that certain goods will not be imported or the license may provide for import of certain other goods which are not injurious to the national interest such as books and journals relating to legal profession and

which are not even of the Indian origin but are merely Indian reprints of foreign books and published by publishing houses based in India.

iv) The right guaranteed by Article 19 is inextricably linked to and dependent upon the right to read and receive information. Only then is it possible for the right to freedom of speech to be exercised in a wholesome manner. Thus there must be sovereignty of choice to vest in a reader to sift through different sources of material of literary value which will, in turn, equip him or her with knowledge so that the cherished right to freedom of speech and expression can be enjoyed. It will be noted that the right is subject to reasonable restrictions imposed by law, amongst others, in the interest of friendly relations with foreign states. This will include restrictions to be imposed if the relations with a foreign state do not remain so friendly.

v) It has long been settled that a question relating to foreign affairs and national security is par excellence a non-justiciable question. Courts have accorded a substantial degree of deference to the expertise of agencies in assessing the risk to national security and in weighing it against countervailing interests. This is being done for two reasons; The first is, institutional competence and the second is, democratic legitimacy of the executive

vi) It is true that power to issue orders under Section 3(1) of the 1950 Act is not absolute and it has to be exercised in a structured manner according to the rules of reason and justice, not according to private opinion. It cannot be arbitrary, vague and fanciful.

vii) The right question to ask is whether the discretion was exercised on purely trading and commercial considerations or had a predominantly national security and foreign affairs / diplomatic relations feature to it. The reply makes it evident that the decision-making was largely influenced by the latter and so the discretion so exercised cannot be reviewed in the narrow prism of rationality and impropriety. In the assessment of proportionality in this case, conventional rules will not apply and appropriate weight is due to the experience and opinion of agencies, based on sensitive intelligence information.

Conclusion: i) Indubitably, greater significance must attach to the words ‘of goods of any specified description’ as used in section 3 of 1950 Act. The true construction must be that this does not confer a sweeping power on the Federal Government to prohibit import or export of all goods from any country and the power lies merely to prohibit or restrict ‘goods of any specified description’.

ii) Yes, it is discretion of Federal Government to conclude that import of books have adverse bearing on national security or interest of the country.

iii) The intention to be gathered from a reading of section 3 leads to the ineluctable conclusion that a complete prohibition of import of goods would be an infringement of rights guaranteed by Article 18 of the Constitution.

iv) The right guaranteed by Article 19 is inextricably linked to and dependent upon the right to read and receive information and the right is subject to reasonable restrictions imposed by law.

v) A question relating to foreign affairs and national security is par excellence a non-justiciable question.
vi) Power to issue orders under Section 3(1) of the 1950 Act is not absolute. It cannot be arbitrary, vague and fanciful.
vii) If the decision-making regarding ban on import of books is largely influenced by the national security and foreign affairs / diplomatic relations then the discretion so exercised cannot be reviewed in the narrow prism of rationality and impropriety.

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12. **Lahore High Court**
Sonia Sharief v. Addl. District & Session Judge, etc.
W.P.No.97 of 2024
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC381.pdf

Facts: The petitioner is an overseas Pakistani and she was married to respondent No.3. It is alleged by the petitioner that the "respondent" contracted second marriage without seeking formal permission from her. This prompted the petitioner to file complaint under section 6 of the Muslim Family Laws Ordinance, 1961 through her special attorney before the Family Court. The complaint was dismissed preliminary, being not maintainable. The petitioner then filed a revision petition which too was dismissed hence this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

Issues: i) Whether a complaint under section 6 of the Muslim Family Laws Ordinance, 1961 can be filed and prosecuted through attorney or not?
ii) Whether a complaint can be proceeded through attorney or an accused can defend the charges through his/her attorney in criminal proceedings?

Analysis: i) Section 262 of "Cr.P.C" forming part of Chapter XXII envisages that in trials under this Chapter, the procedure prescribed in Chapter XX shall be followed except as hereinafter mentioned. Chapter XX of "Cr.P.C" provides the manner of trial of cases by Magistrate. While examining the provisions of Chapter XX of "Cr.P.C", it becomes crystal clear that appearance of complainant before the Magistrate is necessary and non-appearance contemplates consequences in the shape of dismissal of complaint and acquittal of respondent accused.
ii) It is an oft repeated principle of law that in criminal proceedings, neither a complaint can be proceeded through attorney nor an accused can defend the charges through his/her attorney… The conclusion is undoubtedly rested upon the fact that agitating or defending the criminal proceedings is always a personal act of the complainant or accused. The criminal proceedings in the Court, thus, cannot be initiated through attorney as the criminal administration of justice recognizes only those as a witness or complainant who either have seen, heard or least perceived any fact towards the offence. An attorney being not uttering of his/her own knowledge rather deposing the voice of his/her master would not fall

within the meaning of witness/complainant. An attorney, thus, is precluded to get register first information report or a criminal complaint. There is no concept or even legal provision allowing initiation of proceedings or recording of evidence through attorney in the criminal law. The concept of representation through attorney either by the complainant or the accused is alien to the criminal jurisprudence so far…

Conclusion: i) A complaint under section 6 of the Muslim Family Laws Ordinance, 1961 cannot be filed and prosecuted through attorney.
ii) It is an oft repeated principle of law that in criminal proceedings, neither a complaint can be proceeded through attorney nor an accused can defend the charges through his/her attorney.

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13. **Lahore High Court**
The State v. Ghulam Abbas alias Agha.
Murder Reference No. 319 of 2019
Ghulam Abbas alias Agha v. The State, etc.
Crl. Appeal No.78701 of 2019
Ghulam Raza v. The State, etc.
Criminal Revision No.63816 of 2019
Mr. Justice Shehram Sarwar Ch., Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2024LHC369.pdf

Facts: Additional Sessions Judge, for offences under sections 302/324/109, P.P.C, at the conclusion of trial convicted appellant/convict under Section 302(b) PPC and sentenced to death as Tazir on three count with a direction to pay a sum of Rs.300,000/- as compensation under Section 544-A Cr.P.C. to the legal heirs of each deceased, in default thereof to further undergo six months S.I. on three count. The appellant/convict filed criminal appeal against his conviction and sentence and the Trial court transmitted murder reference for confirmation or otherwise of death sentence. The complainant of the case also filed Criminal Revision for enhancement of sentence awarded by the learned trial Court to the appellant.

Issues: i) Whether conviction and sentence can be based upon the testimony of chance witnesses?
ii) Whether conviction can be based upon the dying declaration alone?
iii) What is the purpose of statement u/s 161 Cr.P.C?
iv) Whether the medical evidence provides any corroboration to the ocular account?

Analysis: i) There is hardly any doubt in the legal proposition that the conviction and sentence can be based upon the testimony of chance witnesses if that is sufficiently corroborated by the other pieces of evidence coming forth from independent sources(…)
ii) The statement in shape of dying declaration of a deceased is relevant and

admissible under Article 46(1) of Qanoon-e-Shahadat Order, 1984 and Rule 25.21 of Chapter XXV of Police Rules, 1934…There is no cavil with the legal proposition that conviction can be based on the dying declaration alone…However, for making reliance on this piece of evidence, the superior judiciary of the country had enumerated certain conditions to be fulfilled to make it trustworthy and reliable.The August Supreme Court of Pakistan in case of "Mst. ZAHIDA BIBI v. THE STATE" (PLD 2006 SC 255) had authoritatively held, if such statement was recorded in hospital, it should be written in presence of a Doctor or any other staff of hospital should be associate(…)

iii) The purpose of statement u/s 161 Cr.P.C. recorded by the Investigating Officer during the course of investigation is only one, in our Criminal Administration of Justice, which has been provided u/s 162 Cr.P.C…Meaning thereby that the purpose of statement u/s 161 Cr.P.C. is to contradict and confront the witnesses in the manner as provided u/s 140 of Qanoon-e-Shahadat Order, 1984(…)

iv) The medical evidence does not provide any corroboration to the ocular account, rather it just confirms the nature and seat of injuries, the weapon used therein and the time elapsed between injuries & death and death & postmortem (…)

Conclusion: i) Yes, conviction and sentence can be based upon the testimony of chance witnesses but subject to sufficient corroboration with other independent piece of evidence.

ii) Yes, conviction can be based upon the dying declaration alone, if certain conditions under Article 46(1) of Qanoon-e-Shahadat Order, 1984 and Rule 25.21 of Chapter XXV of Police Rules, 1934 are fulfilled to make it trustworthy and reliable.

iii) See above in analysis portion.

iv) The medical evidence does not provide any corroboration to the ocular account.

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14. **Lahore High Court**
Shakeel Akhtar v. The State etc.
Criminal Revision No.71205/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC7687.pdf

Facts: The Petitioner has assailed the order by filing criminal revision through which the application for conducting of his DNA test was accepted by the trial court during the trial stage when eight witnesses from the prosecution side were recorded.

Issues: (i) Whether Article 13(b) of the Constitution of 1973 allows the collection and analysis of DNA from people arrested and charged with serious crimes?

(ii) Whether the court can order an accused's DNA test during the trial?

Analysis: (i) In Pakistan, DNA tests are considered valuable for delivering justice in criminal cases. Several provisions furnish the legal framework for their admissibility. The DNA test of an accused person does not offend Article 13(b) of the Constitution of 1973. DNA collection in criminal cases is analogous to the police practice of taking photographs or collecting fingerprints of the accused. It accomplishes the same function more effectively. It is not testimonial because the investigator – or the court – draws his own conclusions. One cannot claim that by providing a sample for the test, the accused imparted any information based on his own knowledge and became a witness against himself, violating Article 13(b). Parliament has enacted sections 53A, 164A and 164-B Cr.P.C. to specifically accord statutory recognition to the DNA test in respect of the offences under sections 376, 377 and 377-B PPC. The Supreme Court's ruling in Salman Akram Raja, (2013 SCMR 203) is also a legal mandate for DNA testing of an accused to determine the authenticity of the allegations levelled against him. Parliament has enacted sections 53A, 164A and 164-B Cr.P.C. to specifically accord statutory recognition to the DNA test in respect of the offences under sections 376, 377 and 377-B PPC.

(ii) A careful study of the relevant provisions of the Code of Criminal Procedure, 1898, and other applicable statutes discloses a scheme which aims at strengthening the investigator's hands. Therefore, in a criminal case, a trial court can rectify an intentional or unintentional lapse on the part of the complainant, the Investigating Officer or the prosecuting counsel by calling in evidence on its own if it can have a bearing on the determination of guilt or innocence of the accused person. Such authority must be granted to a criminal court in the larger interest of the community. The stage of the trial is irrelevant for this purpose. The only factor important for exercising such power is that the evidence called is relevant. Section 10 of the Punjab Act of 2007 authorizes the court, tribunal or authority to send a forensic material related to the investigation or proceedings before it to the PFSA for analysis and expert opinion. Hence, the court may also invoke section 10, ibid, to order an accused's DNA test. A fair trial necessitates striking a balance among the interests of the accused, the victim, and society, which the State and prosecuting agencies represent.

Conclusion: (i) The DNA test of an accused person does not offend Article 13(b) of the Constitution of 1973.

(ii) Yes, DNA test could be conducted irrespective of the stage of the trial.

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15. **Lahore High Court**
Zain Ali and another v. Additional Inspector General of Police and others
Writ Petition No.65602/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2024LHC420.pdf

Facts: One of the petitioners recorded his cross-version against one of the respondents/ complaint of a case FIR. The said respondent applied to the District Police Officer

for a change of investigation which was allowed. The petitioners challenged this order of change of investigation. The said respondent also filed a private complaint and during pendency of the same sought a second change of investigation in terms of Article 18A (2) of the Police Order 2002 which was also allowed. One of the petitioners has also assailed the said order.

Issues: i) Whether the concept of *further investigation* is distinguishable from the concept of *re-investigation*, *fresh* or *de novo investigation*?
ii) Whether there is any prohibition on police authorities to conduct further investigations or re-investigations in a criminal case after the submission of the final report under section 173 Cr.P.C.?
iii) Whether the process of investigation can be suspended due to pendency of a private complaint in view of the dictum laid down in *Nur Elahi Case*?

Analysis: i) Investigations can take various forms: (i) initial investigation, (ii) further investigation, or (iii) fresh, *de novo*, or re-investigation. The investigation conducted by the authorized police officer following the registration of an FIR may be termed an "initial investigation". It may lead to filing a final report under section 173(2) Cr.P.C…The necessity for "further investigation" arises when additional inquiries or examinations are required to gather more evidence or clarify certain aspects of the case. This need is often prompted by new information that surfaces during the initial investigation or in response to developments within it. Typically resulting in a "supplementary report", it complements the initial investigation without nullifying it. Hence, "further investigation" should be distinguished from "re-investigation", "fresh", or "*de novo* investigation"…Fresh/re-investigation can be ordered when there is a complaint alleging that the initial investigation is flawed, unfair, tainted, *mala fide*, or otherwise fails to serve the interests of justice. At times, re-investigation may bring on record conflicting evidence and contradictory opinions of police officers. In such situations, the court must evaluate them following the established principles of criminal jurisprudence and rules of evidence to arrive at a correct decision.
ii) There is no prohibition on police authorities to conduct further investigations or re-investigations in a criminal case after the submission of the final report under section 173 Cr.P.C. However, there is a conflict in judicial decisions regarding whether they can do so after the accused has been indicted. In *Altaf Ahmad Makhdoom v. Inspector General of Police, Punjab, and others* (2023 PCr.LJ 1), after thoroughly analyzing the case law on the subject, the High Court held that the Supreme Court's ruling in *Muhammad Akbar v. The State and another* (1972 SCMR 335) was the binding authority. A 4-member Bench handed down this decision, while others have come from Benches of lower numerical strength of the Supreme Court or the High Courts.
iii) In *Nur Elahi*, the central question revolved around the appropriate course of action when there is both a challan case and a private complaint regarding the

same occurrence. The Supreme Court focused on guiding how the courts should proceed with the trial in such situations. The police investigation was not an issue at all. In other words, the findings in *Nur Elahi* are confined to judicial proceedings and do not address the issue of further investigation or re-investigation. Thus, *Nur Elahi* cannot be interpreted to lay down a rule that the investigation process should be held in abeyance until the decision of the private complaint… The concept of suspending the investigation process and linking it with the decision of a private complaint militates against the policy and scheme of law. Section 173 Cr.P.C. contemplates expeditious completion of investigation and commencement of trial. It mandates that as soon as the investigation is completed, the officer in charge of the police station must promptly forward a report in the prescribed form through the public prosecutor to the magistrate authorized to take cognizance of the offence. If the investigation is not concluded within 14 days from the date of registration of the First Information Report (FIR), the officer in charge of the police station must, within three days after that, submit an interim report (through the public prosecutor) to the magistrate, in the prescribed form, detailing the results of the investigation made until then. The court should then immediately commence the trial unless there are valid reasons for a postponement… The law's intention for the expeditious conclusion of investigations is also evident in Article 18A of the Police Order, which outlines specific timelines for each tier to decide on applications for the transfer of investigations… The only circumstance allowing the suspension of the investigation is outlined in Rule 25.57(2)(i)… Section 56(e) of the Specific Relief Act 1877 explicitly prohibits the issuance of injunctions to stay criminal proceedings…halting an investigation could lead to severe complications: witnesses may pass away or become unavailable, memories may fade, crucial documents may disappear or be lost, or the relevant evidence may be tampered with or suborned.

Conclusion: i) The concept of *further investigation* is distinguishable from the concept of *re-investigation*, *fresh* or *de novo investigation*.

ii) There is no prohibition on police authorities to conduct further investigations or re-investigations in a criminal case after the submission of the final report under section 173 Cr.P.C.

iii) The process of investigation cannot be suspended due to pendency of a private complaint in view of the dictum laid down in *Nur Elahi Case*.

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16. **Lahore High Court**
Muhammad Shoaib v. ADJ, Lodhran, etc.
Writ Petition No.826 of 2022
Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC322.pdf

Facts: This petition has been filed under Article 199 of the Constitution of the Islamic Republic of Pakistan to assail consolidated judgments & decrees passed by

learned Senior Civil Judge and District Judge, whereby suit for recovery of dower, etc. filed by respondent was partially decreed, whereas appeal filed by petitioner against decree of trial court was dismissed.

Issues: i) If there was no consummation of marriage or a valid retirement (khalwat-e-sahiha) before pronouncement of divorce by the husband, whether the wife would be entitled to get half of the dower so fixed?
ii) Where marriage was not dissolved by way of pronouncing talaq by the husband on a wife and marriage was not consummated or there was no valid retirement, whether wife would be entitled to any amount of dower so fixed if dissolution of marriage had taken place at her wish or instance?
iii) Whether jurisdiction under Article 199 of the Constitution can be invoked to correct wrong committed by both the courts?

Analysis: i) It is by now settled proposition of Islamic law that if marriage between the parties has either been consummated or there was a valid retirement (khalwat-e-sahiha) before pronouncement of divorce by the husband, the whole of the unpaid dower whether prompt or deferred, becomes immediately payable by the husband to the wife and is enforceable/recoverable like any other debt, however, if there was no consummation of marriage or a valid retirement (khalwat-e-sahiha) before pronouncement of divorce by the husband, the wife would be entitled to get half of the dower so fixed in view of the command of Allah as ordained in Ayat No.237 of Surah Al-Baqarah.
ii) Undeniably, in the instant case, petitioner did not pronounce divorce upon the respondent and respondent obtained the decree for the dissolution of marriage in terms of section 10(4)(5) of the Act, 1964 before consummation of marriage or valid retirement. In the instant case, it was the respondent who herself approached the court seeking dissolution of marriage on the basis of Khula by asserting that she would rather die than joining the petitioner as his wife. Since in the instant matter, petitioner did not dissolve the marriage by pronouncing divorce upon respondent prior to consummation of marriage or valid retirement, respondent would not become entitled to receive even half of her dower as decreed by the learned Judge Family Court and maintained by the learned Appellate Court. In view of para No.289-F of the Principles of Muhammadan Law by D.F. Mulla, dower becomes confirmed by consummation of marriage; or by valid retirement (khalwat-e-sahiha); or by death of either husband or wife and in case husband pronounces divorce upon his wife before consummation of marriage or valid retirement (khalwat-e-sahiha), wife would become entitled to receive half of the dower. In this case, however, it is not the case that the marriage between the parties was dissolved by pronouncing divorce by the petitioner and it was respondent who obtained decree for the dissolution of marriage in terms of section 10(4)(5) of the Act, 1964. Where marriage was not dissolved by way of pronouncing talaq by the husband on a wife and marriage was not consummated or there was no valid retirement, wife would not be entitled to any amount of

dower so fixed if dissolution of marriage had taken place at her wish or instance.
iii) While passing impugned judgments & decrees, both the courts below have committed jurisdictional error and exceeded their jurisdiction. Instant case is a fit case for interfering in impugned judgments & decrees in view of the guidelines given in Mst. Tayyeba Ambareen's case by invoking the provisions of Article 199 of the Constitution for the reason that objective of Article 199 of the Constitution is to foster justice, protect rights and to correct the wrong. In the instant case wrong committed by both the courts below needs to be corrected by invoking the jurisdiction under the provisions of Article 199 of the Constitution in order to foster justice and protect the rights of petitioner.

Conclusion: i) If there was no consummation of marriage or a valid retirement (khalwat-e-sahiha) before pronouncement of divorce by the husband, the wife would be entitled to get half of the dower so fixed.
ii) Where marriage was not dissolved by way of pronouncing talaq by the husband on a wife and marriage was not consummated or there was no valid retirement, wife would not be entitled to any amount of dower so fixed if dissolution of marriage had taken place at her wish or instance.
iii) The jurisdiction under Article 199 of the Constitution can be invoked to correct wrong committed by both the courts in order to foster justice.

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17. **Lahore High Court**
Amir Shahzad v. The State, etc.
Criminal Appeal No.38881 of 2019
Muhammad Iqbal v. The State, etc.
Criminal Revision No.43848 of 2019
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC390.pdf

Facts: The appellant and his father along with co-accused were tried, by the Additional Sessions Judge on the charge of committing murder in case FIR for offences under sections 302/34 PPC and at the conclusion of trial while acquitting co-accused, the appellant was convicted under section 302(b) PPC and sentenced to imprisonment for life along with compensation. Through Criminal Appeal, he has assailed his conviction and sentence, whereas, Criminal Revision has been filed by the complainant seeking enhancement of his sentence.

Issues: i) Whether a bullet fired from a firearm can take any unpredictable course on impact with bones, tissues etc. and what are the possibilities when a body gets a firearm injury and the bullet cannot be located by the doctors?
ii) Whether conflict in ocular and medical evidence causes damage to the prosecution case?
iii) Whether the motive set up by the prosecution but could not be established creates doubt in the prosecution case?
iv) Whether non-availability of cartridge shell makes recovery of gun

inconsequential?
v) Whether an accused can be convicted when, on the same set of evidence, a co-accused has been acquitted by the trial court?

Analysis: i) No exit wound was observed by the doctor; when cross-examined on this point, he conceded that there was one entry wound on the dead body of the deceased without any exit and no any kind of foreign body was recovered from the dead body of the deceased despite exploring. He also observed blackening around the wound but non-availability of exit wound questions the manner of injury, though he explained that some time foreign body reaches in vertebra or spinal cord yet it cannot be dissected unless dead body is divided into two parts which act, they do not perform for the dignity/respect of the dead body. Said observation of the doctor was attended in the light of precedents and forensic literature and found some related explanation in a case reported as "Nirmal Singh And Anr vs State Of Bihar" (AIR 2005 SUPREME COURT 1265) which also deals with situation of lost bullet in the body… In another case reported as "MUHAMMAD AHMAD and another versus THE STATE and others" (1997 SCMR 89), it has been held that the authorities on Medical Jurisprudence and the Forensic Ballistics are, however, agreed that a bullet fired from a fire-arm may take any unpredictable course on impact with bones, tissues etc. Taylor in his Principles and Practice of Medical Jurisprudence, Volume I at page 446… Though spontaneous migration of a retained bullet is rare, yet during a study, a spontaneous migration of bullet from arm to forearm was observed in a case of a 24-year-old male. This study was published in 'Journal of Ultrasound' (a journal of the Italian Society of Ultrasonology of medicine and biology), Published online 2013 Oct 19. Similarly, in an article by Saptarshi Biswas, Catherine Price, and Sunil Abrol, published in 'Case Reports in Critical Care' (Published online 2014 Jan 28) (https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4009998/) on following subject; "An Elusive Bullet in the Gastrointestinal Tract: A Rare Case of Bullet Embolism in the Gastrointestinal Tract and a Review of Relevant Literature" Which shows that bullet can be lost in the body cavity anywhere… All the above cited cases deal with deflection of bullet but present is the cartridge case fired from a gun; neither any wad nor any pallets were recovered though its dispersion was expected. Doctor too has conceded doctor during cross examination that he did not mention the fact of reaching the foreign body to vertebrae or spinal cord in the postmortem report. It has been observed that he did not suggest any x-ray or nor used any latest technique to track the cartridge inside the body. Thus, when there was no exit wound and no pellets were recovered from the body, the case of the prosecution becomes more doubtful with respect to injury caused by firearm weapon.
ii) In this way the circumstances create serious doubt about the medical evidence in this case. This conflict in ocular and medical suggests that witnesses have not seen the occurrence and such conflict is damaging for the prosecution.
iii) Motive set up but could not be established by the prosecution leaving the

entire episode of the tragedy in doubt.

iv) It was a single fire shot case and as a matter of fact, a cartridge shell is not ejected automatically after a fire by gun 12 bore rather it is ejected manually to reload a new cartridge. However, it is different in case of a repeater/pump action. Pump action shotguns are one of the most popular types of shotguns, and can hold multiple rounds. They have a great round capacity that will allow you to spend more time shooting and not reloading. These guns function by manually sliding or "pumping" the action in order to eject a spent shell and chamber a new round. As long as the shooter pumps it back completely, these shotguns are extremely reliable and do not jam very often. This makes them popular choices for hunting, home defence, and even law enforcement applications. The 12 Bore Pump Action Gun has been specially developed for use as a security weapon. It is a single barrel breach loading weapon superior to 12 Bore DBBL. It is provided with a tubular magazine, which holds 4 nos. of 12 Bore Cartridges and is placed parallel to and below the barrel. Extraction, loading and cocking of the cartridges take place in a single 'pump action' by operating handle, sliding along the magazine. Due to rapid reloading by pump action and spread of shots, it is an ideal weapon for counter ambush tactics. Thus, if a 2nd fire is intended, then spent shell is to be ejected by operating handle, sliding along the magazine. Some references were collected on topic "Shotgun Basics: Identifying parts and functions" from following site; https://tacticalgear.com/experts/shotgun-basics-identifying-parts-and functions...The fire has not been repeated in the present case; therefore, no question of ejecting of cartridge or falling at the place of occurrence arises. However, in any case non-availability of cartridge shell makes recovery of gun inconsequential and PFSA report to the extent of functionality test is not helpful to the prosecution.

v) Another aspect of the matter is that during trial, on the same set of evidence, two co-accused stood acquitted by the learned trial court and Criminal Appeal filed against their acquittal also stood dismissed… as such, serious doubt spurred out in the prosecution case qua the participation of present accused/appellant; thus, he could not be convicted under the principle of "falsus in uno, falsus in omnibus" (false in one thing, false in all).

Conclusion: i) See above analysis No. (i).

ii) Conflict in ocular and medical evidence causes damage to the prosecution case.

iii) The motive set up by the prosecution but could not be established creates doubt in the prosecution case.

iv) In any case, non-availability of cartridge shell makes recovery of gun inconsequential and PFSA report to the extent of functionality test is not helpful to the prosecution.

v) See above analysis No. (v).

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18. **Lahore High Court**
Ihsan Ullah alias Munshi, etc. v. The State etc.
Sikandar Hayat v. Saleem alias Seemu etc.
Criminal Appeal No. 53656/2019
Criminal Revision No.58451/2019
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC406.pdf

Facts: Through this Criminal Appeal accused/appellants have challenged their conviction passed under inter alia section 302(b)/34 PPC whereas, through Criminal Revision a witness/brother of deceased has sought enhancement of sentence against the appellants.

Issues: (i) Whether hostility of a witness in a previous trial can be a ground to reject his testimony in the latter trial?
(ii) Whether minor contradiction in ocular account, due to efflux of time, affects the case of prosecution?
(iii) What is effect of abscondence of accused after the occurrence?
(iv) Where recovery of weapon has been effected after a long period then whether availability of matching report is still expected?
(v) Whether acquittal of co-accused under the principle of abundant caution reflects adversely upon the case of the other accused person?
(vi) What is effect of joint role of firing?
(vii) Whether a witness once disbelieved in a trial can be relied upon in subsequent trial?

Analysis: (i) Hostility of a witness in a previous trial is no ground to reject his testimony in the latter trial. However, it is trite that its intrinsic value is diminished if it is not corroborated with any other evidence whereas in the present case it is very much available in the form of statement of two more witnesses of ocular account.
(ii) Witnesses of ocular account despite being recorded after 17 years of the occurrence had a touch of truth and minor contradiction due to efflux of time are natural; therefore, have not affected the prosecution case in any manner.
(iii) It is trite that abscondence is always considered as corroborative evidence, though not a sole reason to convict the accused.
(iv) In a recovery of weapon after a long period, availability of matching report is hardly expected. This inconsequential effect of recovery in no case affects the prosecution case.
(v) It has been observed that injuries attributed to (acquitted accused of earlier trial) and (acquitted accused of present trial) were observed by the doctor as exit wounds and no recovery was effected thus, their case is distinguished and under the principle of abundant caution, present accused/appellants can be singled out.
(vi) Joint role of firing is always considered as mitigation.
(vii) A witness if missed or exaggerated a fact in an earlier trial cannot be termed as untruthful in subsequent trial if his testimony is straight forward and natural. If

this be permitted then once some witnesses are disbelieved in an earlier trial their testimony cannot be relied upon in subsequent trial, then the accused later tried would receive a clean chit on the basis of statement earlier made by the said witnesses. Competency of a witness is regulated under Article 3 of Qanun-e-Shahadat Order, 1984. The first proviso to above Article clearly speaks that only that person shall be prevented to be testified if he is convicted of perjury or giving false evidence. As per 2nd proviso to above Article, even such witness can also be permitted if court is satisfied on his repentance.

Conclusion: (i) Hostility of a witness in a previous trial is no ground to reject his testimony in the latter trial.
(ii) See analysis part.
(iii) See analysis part.
(iv) In a recovery of weapon after a long period, availability of matching report is hardly expected.
(v) See analysis part.
(vi) Joint role of firing is always considered as mitigation.
(vii) A witness if missed or exaggerated a fact in an earlier trial cannot be termed as untruthful in subsequent trial if his testimony is straight forward and natural.

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19. **Lahore High Court**
M/s Jalal Construction Company v. The Secretary, C&W Department, Government of Punjab and 03 others
W.P. No. 23988 / 2022
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC329.pdf

Facts: Constitutional Petitions were filed by the petitioners in the capacity of Government Contractors who participated in various tenders floated by multiple procurement agencies operating under the ambit of the Federal Government or the Provincial Government of Punjab. After having being declared as the lowest bidder or successful bidder, as the case may be, the petitioners were required by the respondents to deposit securities of specified amount in terms of performance security or additional performance security/quality assurance security in the form of bank guarantee by specifically excluding insurance bond/guarantee from an insurance company having at least AA rating from PACRA/JCR under the applicable procurement laws, rules and Standard Bidding Documents.
Petitioners impugned letters issued by procuring agencies demanding performance or additional performance/quality assurance securities via bank guarantees by excluding insurance bond/guarantee from an insurance company. Moreover in some of the Petitions, Circular dated 29.07.2020 issued by the Punjab Procurement Regulatory Authority constituted under the Punjab Procurement Regulatory Authority Act, 2009 was also challenged which endorsed the decision of the procuring agencies in the Province of Punjab to exclude insurance bond / guarantee from an insurance company as a form of security in

the SBDs.

Issues: (i) Whether the act of procuring agencies falling under the ambit of the Federal Government and the Provincial Government of Punjab to exclude insurance bond/guarantee from insurance companies as a form of security with respect to performance or additional performance/quality assurance security is lawful under the applicable procurement laws and the SBDs (standard bidding documents) of PEC (Punjab Engineering Council) endorsed by ECNEC (National Economic Council) and notified by the Planning Commission, Government of Pakistan?
(ii) What is domain, scope and ambit of the Pakistan Engineering Council Act, 1975 "PEC Act".
(iii) Whether National Economic Council or ECNEC under Article 156 of the Constitution has restricted general advisory mandate in terms of policy matters which does not extend to micro-manage the procurement process of a procuring agency existing under the Federal or Provincial Governments and in no way curtails the powers of a procuring agency to prescribe or exclude a particular form of guarantee as the same is permissible under the SBDs of PEC?

Analysis: (i) At the Federal level, the Authority constituted under the PPRA Ordinance, 2002 read with PPRA Rules, 2004 and the Regulations, 2008 is legally empowered to devise SBDs but it has adopted the SBDs prepared by PEC and as such, all procuring agencies falling under the Federal Government are obliged to use the SBDs of PEC in their respective procurement process. However, SBDs of PEC allow a procuring agency to exclude insurance bond / guarantee from an insurance company having AA rating from PACRA / JCR as a form of security with respect to performance or additional performance / quality assurance security by prescribing as such in its SBDs. In the Province of Punjab, the Authority set up under the PPRA Act, 2009 read with the Rules, 2014 is legally empowered to devise SBDs which have been duly made and notified, as such, all procuring agencies including Local Governments in the Province of Punjab are obliged to use SBDs prepared by the Authority under the PPRA Act, 2009. Hence, the conscious act of exclusion of insurance bond / guarantee from an insurance company as a form of security with respect to performance or additional performance / quality assurance security is valid and the bidders are obliged to take part in the procurement process in accordance with the terms and conditions of the SBDs. The act of exclusion of insurance bond / guarantee as a form of security with respect to performance or additional performance / quality assurance security by a procuring agency falling under the Federal or Provincial Government of Punjab is not in conflict with the decision of ECNEC reflected in the Notification dated 12.02.2008 of the Planning Commission, Government of Pakistan.
(ii) It is abundantly clear from an overview of PEC Act that its domain, scope and ambit is limited vis-à-vis regulation of various aspects of engineering profession and for matters ancillary thereto. The SBDs prepared by PEC in pursuit and in

furtherance of engineering profession may be adopted by any public or private entity as there is no bar in using or consulting the same and may validly be regarded as benchmark for engineering contracts. However, the SBDs prepared by PEC are not sacrosanct and as such, the parties to a contract cannot be forced or compelled to adopt the same, if they choose any other SBDs with respect to their respective contracts. Hence, the procuring agencies of Federal, Provincial and Local Governments are not legally bound to adopt and adhere to the SBDs prepared by PEC under the PEC Act.

(iii) It is evident from bare perusal of Article 156 of the Constitution that the scope and mandate of National Economic Council is to review the general and overall economic conditions of the country and formulate plans regarding financial, commercial, social and economic policies with the primary objective to ensure balanced and sustainable development keeping in view regional equity in accordance with the principle of policy set out in Chapter 2 of Part-II of the Constitution. In this respect, it renders advice to the Federal and Provincial Governments. ECNEC is the Executive Committee of the National Economic Council to swiftly transact the business of National Economic Council. Rule 22 of the Rules of Business, 1973 stipulates the procedure regarding the functioning of ECNEC. However, it is settled law that decisions taken on the administrative side cannot override or prevail over express provisions of law. Further, the essence of the decision of ECNEC is to substantially adopt the SBDs of PEC but it does not prohibit minor alterations thereto by a procuring agency within its lawful mandate to meet peculiar requirements of a procuring agency.

Conclusion: (i) The exclusion of insurance bond / guarantee as a form of security by the procuring agencies of the Federal Government and the Provincial Government of Punjab with respect to performance or additional performance / quality assurance guarantee is permissible in terms of lawful discretion of a procuring agency provided it is specifically stated in the SBDs.

(ii) See corresponding analysis part.

(iii) The general policy advice of ECNEC reflected in the Notification dated 12.02.2008 of the Planning Commission, Government of Pakistan requiring all procuring agencies of the Federal, Provincial and Local Governments throughout Pakistan to adopt and use SBDs prepared by PEC does not prevail over express statutory provisions.

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20. **Lahore High Court**
Syed Wajahat Hussain Shah v. Election Commission of Pakistan and 6 others
Writ Petition No. 3113 of 2023
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC288.pdf

Facts: The present petition is filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 whereby petitioner challenged the withdrawal of his

candidature and exclusion of his name from the list of valid candidates.

Issues: i) What are the requirements of section 65(1) of the Election Act, 2017?
ii) When a notice of withdrawal is not open to be recalled?

Analysis: i) Sub-section (1) of section 65 of the *Act* has two requirements; *(i)* a validly nominated candidate to give notice in writing for withdrawal of candidature, and *(ii)* it is delivered to the Returning Officer either by candidate himself or by an advocate authorized in writing by the candidate.
ii) Once the said requirements of law are fulfilled, the Returning Officer if satisfied that signature on the notice is that of the candidate, can cause a copy of notice to be affixed at conspicuous place in his office. The notice of withdrawal, if in accordance with law, in no circumstances is opened to be recalled or cancelled.

Conclusion: i) See above corresponding analysis.
ii) The notice of withdrawal, if in accordance with law, in no circumstances is open to be recalled or cancelled.

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21. **Lahore High Court**
Sheikh Muhammad Anwar and 04 Others v. Judge Banking Court and another.
Writ Petition No. 38033 of 2023 etc.
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC297.pdf

Facts: Through this Constitutional petition along with other petitions detailed in schedule "A" the petitioners being aggrieved from the complaints filed by the financial institutions under section 20 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 pending before various Banking Courts, sought stay of proceedings in the criminal complaints, inter alia, on the common ground that criminal proceedings under the Ordinance cannot proceed simultaneously with the civil proceedings.

Issues: i) Whether utilization of finance facility for a purpose other than for which it was obtained without permission of the financial institution can constitute willful default?
ii) Whether a person who commits an offence as envisaged in section 20(1)(a) to (c) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 can be punished under said provision without prejudice to any other action which may be taken against him under the Ordinance?
iii) Whether criminal and civil proceedings involving same set of transaction can proceed concurrently?
iv) Whether power to adjourn or postpone the proceedings is available to the Banking Courts?

Analysis: i) Section 2(g)(ii) of the Financial Institutions (Recovery of Finances) Ordinance,

2001 primarily relates to utilization of finance facility for a purpose other than for which this facility is obtained. Similarly, removal or transfer, misappropriation or sale of collaterals, as contemplated in section 2(g)(iii) of the Ordinance, can constitute willful default when the same takes place without permission of the financial institution(...)

ii) Whoever, commits offence as envisaged in section 20(1)(a) to (c) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 can be punished under said provision without prejudice to any other action which may be taken against him under the Ordinance. Punishment for section 20(1)(d) of the Ordinance is visibly dependent upon determination of civil liability / decree… where a customer defaults in obligation, he shall be liable to pay, for the period from his default….,apart from other civil and criminal liabilities that he may incur under the contract or rules or any other law for the time being in force(…)

iii) The Supreme Court in various cases has considered the issue of co-existence of criminal and civil proceedings, in cases involving same set of transaction based on provisions of Pakistan Penal Code, 1860 and contractual civil liabilities. Both are treated as distinct and different. It is concluded that both can proceed concurrently because conviction for criminal cases is different from the civil liability…The object of civil proceedings is to enforce civil rights, whereas, criminal proceeding is to punish the offender for committing criminal offence and both even if relating to same matter can proceed simultaneously, it has also been recognized that the criminal courts are empowered to postpone the proceedings when criminal liability is intimately connected with the result of civil proceedings…The principle that the criminal and civil proceedings can be maintained simultaneously is well settled(…)

iv) The Banking Courts in terms of section 7 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 have same powers as are vested in a Court of Sessions under Cr.P.C and where the procedure is not provided in the Ordinance the provisions of the Cr.P.C. are applicable. Therefore, such power to adjourn or postpone is available to the Banking Courts which can be used with caution and remaining within the confines given in "Salman Ashraf" case (2023 SCMR 1292). Such order to postpone or to adjourn the proceedings cannot be made for indefinite period(…)

Conclusion: i) Yes, utilization of finance facility for a purpose other than for which it was obtained without permission of the financial institution can constitute willful default.

ii) Yes, a person who commits an offence as envisaged in section 20(1)(a) to (c) of the Financial Institutions (Recovery of Finances) Ordinance, 2001 can be punished under said provision without prejudice to any other action which may be taken against him under the said Ordinance.

iii) Yes, criminal and civil proceedings involving same set of transaction can be proceeded concurrently.

iv) Yes, power to adjourn or postpone the proceedings is available to the Banking

Courts.

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22. **Lahore High Court**
Muhammad Aslam v. Govt. of the Punjab & 5 others.
Writ Petition No. 23394 of 2023.
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC7670.pdf

Facts: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner assailed the auction of certain blocks of sand by Mines and Mineral Department, Punjab on the ground that the auction is taking place without obtaining requisite approval from Environment Protection Agency.

Issues: i) Who is responsible for obtaining the reports from Environment Protection Agency before initiating the process for bidding mines and mineral projects?
ii) Is it mandatory to disclose any other pending litigation having direct or indirect effect on the proceedings or its outcome for seeking relief under Article 199 of the Constitution?

Analysis: i) Recently, in case titled "Public Interest Law Association of Pakistan registered under the Societies Act, 1860 through authorized person Chaudhry Awais Ahmed versus Province of Punjab through Chief Secretary, Civil Secretariat, Lower Mall, Lahore and others" (C. P. No. 55 of 2020), the Honourable Supreme Court of Pakistan has resolved the matter of responsibility as to obtaining environmental approval and reports. It has been settled that impact on environment must be looked into, before bidding commences, by the MMD (…) hence the practice of requiring a successful bidder to obtain an IEE or EIA after bidding of the project totally negates the purpose and impact of these reports. The impact on the environment must be looked into before bidding commences by the MMD and at the time of bidding a bidder must know the terms set out in the IEE or EIA that they are bound by and are required to comply with especially the mitigation measures and the EMP. Hence, it is the MMD that is responsible for obtaining these reports before initiating the process for bidding of the said projects.
ii) I am of firm view that litigants are duty bound not just to give disclosure before the Courts as to any other pending litigation, having direct or indirect effect on the proceedings or its outcome but at the same time the disclosure must be full and fair to enable the Courts to do complete justice, expeditiously. The conduct of the litigants causing obstruction in duty of the Courts towards bona fide litigants and such abuse of process is already curbed by the Courts in various judgments (…) Grant of relief under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is a discretionary power of the High Court. A person seeking relief has to satisfy the conscience of the Court that he has approached the Court with clean hands.

Conclusion: i) Mines and Mineral Department is responsible for obtaining the reports from

Environment Protection Agency before initiating the process for bidding mines and mineral projects.
ii) It is mandatory to disclose any other pending litigation having direct or indirect effect on the proceedings or its outcome for seeking relief under Article 199 of the Constitution.

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23. **Lahore High Court**
Beaconhouse School System, Okara v. Commissioner Sahiwal Division, etc.
Writ Petition No. 755 of 2024
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2024LHC280.pdf

Facts: In this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the orders passed by the Chief Executive Officer/Secretary, District Registering Authority and the Commissioner respectively whereby its request for the issuance of School Registration Certificate/E-License for the petitioner was turned down and appeal preferred there-against was dismissed. A direction has also been sought for issuance of School Registration Certificate/E-License of the petitioner's school for affiliation with the Board of Intermediate & Secondary Education and allowing its students to participate in the Board's examination.

Issues: i) Whether Constitution of Pakistan casts an obligation upon the State to ensure the provision of free and compulsory education to all children?
ii) Whether any authority can verify and certify the compliance under clauses (a) & (b) of section 24(2) of the Punjab Free and Compulsory Education Act, 2014 when criteria for the determination of disadvantaged children or payment of vouchers and manner of maintenance of records of children has not been prescribed?
iii) Whether law has to be reasonably precise and unambiguous to attract penal consequences for its alleged violation?

Analysis: i) Access to free and compulsory education is a universally acknowledged right of all children. It is a sine qua non for the development of any State in addition to ensuring equality of opportunity for its citizens and their right to live with dignity. In the Islamic Republic of Pakistan, such right has been included amongst the fundamental rights contained in Chapter 1 of Part II of the Constitution through the Eighteenth Constitutional Amendment. Fundamental rights occupy a place of pride in the scheme of our Constitution and the same indeed are conscience of the Constitution. By insertion of Article 25-A of the Constitution, an obligation has been cast upon the State to ensure provision of the free and compulsory education to all children between the age of 5 to 16 years in such a manner as may be determined by law. The subject of education has been devolved to the provinces for legislation and decisions regarding curriculum, syllabus, planning, policy and standard of education. Accordingly, the Punjab Free and Compulsory Education

Act, 2014 was enacted.

ii) From perusal of the above provisions of law, it is manifest that without framing rules, inter alia, to outline criteria for the determination of disadvantaged children or payment of vouchers and the manner of maintenance of records of children under clauses (a) & (b) of section 24(2) of the Act, any claim of compliance of obligations under section 13 of the Act would remain subjective, open to objections and disputes. Certainty lies at the heart of rule of law…It is for this recognition on part of the provincial legislature that the requirement to specify criteria for the determination of disadvantaged children or payment of vouchers and the manner of maintenance of records of children was mandated for the Government under clauses (a) & (b) of section 24(2) of the Act. No redundancy could be attached to legislative expressions including the aforementioned provisions of section 24 ibid. It is noteworthy that legislation in this case was enacted by the Punjab Assembly in the year 2014 and this Court is at a complete loss in comprehending how the disadvantaged children could be denied their right to education, which is their fundamental right guaranteed under Article 25A of the Constitution, owing to procrastination at the hands of the Government which failed to frame and notify rules in discharge of its responsibilities under clauses (a) and (b) of section 24(2) of the Act. The private education sector, which was supposed to share the responsibility of right to education of disadvantaged children, has benefitted from inaction on part of the Government Departments even after the lapse of 10 years of passing of the Act. At best, it shows an obvious neglect of the Government whereas, at worst, it may well be a case of regulatory capture warranting inquiry. This Court would abstain from commenting on reliability of the information provided to the DRA by other schools in the District, however, it is observed that when criteria for the determination of disadvantaged children or payment of vouchers and manner of maintenance of records of children under clauses (a) & (b) of section 24(2) of the Act has not been prescribed, how could compliance of the same be verified and certified by any authority.

iii) Any vagueness or uncertainty in prescribing legal obligations opens the doors for whimsical, arbitrary and capricious exercise of authority. Law has to be reasonably precise and unambiguous to attract penal consequences for its alleged violation.

Conclusion: i) The Constitution, under article 25-A casts an obligation upon the State to ensure the provision of free and compulsory education to all children between the ages of 5 to 16 years in such a manner as may be determined by law.

ii) Any authority cannot verify and certify the compliance under clauses (a) & (b) of section 24(2) of the Punjab Free and Compulsory Education Act, 2014 when criteria for the determination of disadvantaged children or payment of vouchers and manner of maintenance of records of children has not been prescribed.

iii) Law has to be reasonably precise and unambiguous to attract penal consequences for its alleged violation.

LATEST LEGISLATION / AMENDMENTS

1. Amendment in the Chief Minister's Secretariat Household Staff Service Rules, 2012 in the schedule at Sr.No.3 Column No.7 and Sr.No.8 Column No.7 shall be substituted vide Notification No. No.SOR-III(S&GAD)1-19/2004 published in the official Punjab Gazette through Notification No.8 of 2024 dated 24.01.2024.
2. Vide Notification No.9 of 2024 dated 26.01.2024 published in the official Punjab Gazette, the Governor of the Punjab has declared "Tehsil Model Town, District Lahore" as the place of sitting of Court of Sessions.
3. Vide Notification No.10 of 2024 dated 26.01.2024 published in the official Punjab Gazette, the Governor of the Punjab has declared "Tehsil Bhera, District Sargodha" as the place of sitting of Court of Sessions.
4. Vide Notification No.11 of 2024 dated 26.01.2024 published in the official Punjab Gazette, the Governor of the Punjab has declared "Tehsil Kallar Syedan District Rawalpindi" as the place of sitting of Court of Sessions.
5. Issuance of Schedule in connection with the Election of 8th February, 2024, vide Order No. SO(IS.II)1-1/2004 promulgated by the Law and Parliamentary Affairs Department, Government of Punjab, published in the official Punjab Gazette through Notification No.12 of 2024 dated 31.01.2024..
6. Vide Notification No.13 of 2024 dated 31.01.2024 published in the official Punjab Gazette, the Governor of the Punjab has notified laboratories for the identification of scheduled diseases in the controlled area and buffer zone at two places of Lahore.
7. Vide Notification No.14 of 2024 dated 31.01.2024 published in the official Punjab Gazette, the Governor of the Punjab has authorized the officers at Division, District, Tehsil and Union council levels as competent officers in their respective jurisdiction to regulate the prevention, control, containment and eradication of scheduled diseases under the Punjab Animal Health Act 2019, and the Punjab Animal Health Rules 2021.
8. Vide Notification No.16 of 2024 dated 01.02.2024 published in the official Punjab Gazette, the Governor of the Punjab has constituted "Captive Wildlife Management Committee".

SELECTED ARTICLES

1. **JUSTICE QUARTERLY**
https://www.tandfonline.com/doi/epdf/10.1080/10854681.2017.1307562?needAccess=true

Interim Relief in Judicial Review by Akhlaq Choudhury QC and Zac Sammour

Judicial review is not a speedy affair. On average, a claim for judicial review takes 30 weeks to run its full course. That can be a long time for a claimant to wait, particularly where the act impugned in the proceedings is said to have a direct, and deleterious, impact on the claimant's life or livelihood. By the same token, 30 weeks is a significant time for public bodies to wait before being able to give effect to a lawful decision. It is for that reason that interim relief plays an important role in the practice of judicial review, and applications for such relief are often hard fought. This short article sets out the principles which govern such applications, and draws on recent case law to demonstrate how those principles can play out in practice.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/Law-In-the-Midst-of-Murder

Law in the Midst of Murder by Abhishek Bhardwaj, Vasu Agarwal

Because of the emphasis placed on human life and dignity, as well as the inherent rights that come with it, the murder clause of any criminal law is the most important provision. The Indian Penal Code, 1860, provides a detailed provision for the same, accounting for various degrees of intention. However, society has changed dramatically since the provision was initially drafted. Certain sections have been designed incorrectly, while others have served no function – as evidenced by the treatment of the section's clauses by various courts of justice throughout the last century. It is past time for critical reforms to be implemented, whether it is eliminating a duplicate clause, accounting for moral culpability, or ensuring that doctrines are more precisely articulated. These changes will make the provision and the Code more current and up to date, allowing them to achieve the goals for which they were created. To improve decision-making accuracy, this article advocates for fuller codification of the clauses, updated illustrations, and the complete elimination of Section 300(2) from the Indian Penal Code.

3. **MANUPATRA**
https://articles.manupatra.com/article-details/Editorial-What-Makes-A-Judge-Understanding-Supreme-Court-s-Decision-In-Anna-Mathews-V-Supreme-Court-Of-India

What Makes A Judge? Understanding Supreme Court's Decision in Anna Mathews V. Supreme Court of India by Atharva Chandra1

In democracies, we often find that the seeds of arbitrariness flourish in the soil of opacity. To secure the principles of a healthy democracy, it is crucial that such arbitrariness be dealt with at its root. The root of such arbitrariness in judicial appointments in India lies in the opaque nature of the process. In its effort to establish a procedure which prevents executive bias in the appointment of judges and ensures judicial independence, the judiciary has unfortunately developed a procedure which is characterised by its lack of transparency. This lack of transparency not only affects appointments, but also the transfer of judges, which is reflected in the dubious transfers of judges who have not toed the line of the establishment. Examples of the same may be found in the transfer of Justice Muralidhar, who was transferred a day after his direction to the Delhi Police to investigate allegations against persons linked to the government of the day and their

involvement in instigating the Delhi riots in 2020,33 or the transfer of Justice Banerjee, who initiated a strict policy of zero tolerance for corruption in the Madras High Court.

4. LUMS LAW JOURNAL
https://sahsol.lums.edu.pk/node/11448

Comprehensive Sex Education should be a right under the Constitution of Pakistan 1973 by Mustafa Khalid

The aim of this paper is to assert and support the idea that under Articles 9 (security of person), 14 (right to dignity), 25A (right to education), and 35 (protection of the child) of the Constitution of Islamic Republic of Pakistan 1973 ("Constitution"), the state must be tasked with the positive obligation of providing children with free and safe Comprehensive Sex Education ("CSE") from an early age. The paper highlights judicial precedents wherein the above-mentioned provisions have been interpreted broadly to ensure the safety and well-being of the public-at-large. It juxtaposes such broad interpretations by the courts of Pakistan with the idea that provision of and access to CSE by all members of society is necessary to enable them to live safe and healthy lives, free from sexual coercion, abuse, sexually transmitted diseases, and early pregnancies. Additionally, national measures and international commitments have also been cited to display that while the Government of Pakistan realises the importance of CSE, it has taken few measures to ensure the elevation of CSE as a part of the educational curriculum. The paper also highlights direct quotations from the Quran and Hadith to dispel the false notion that sex education or any reference to sex in public discourse is against the injunctions of Islam. In conjunction with these, this paper has endeavored to outline the risks and harms that adolescents in Pakistan are exposed to daily without the knowledge that CSE seeks to impart. Finally, the fundamental aim of the paper is to initiate a conversation in respect of the importance that CSE has in ensuring that young people lead safe, healthy, and fulfilling lives.

5. COURTING THE LAW
https://courtingthelaw.com/2023/12/11/commentary/coercive-recovery-under-fiscal-legislation/

Coercive Recovery under Fiscal Legislation by Shaheer Roshan Shaikh

The superior courts have recently shored up the jurisprudence with respect to the practice of initiating coercive recovery against taxpayers. They have solidified their position on established principles, such as: the requirement of an independent forum's decision before any coercive action; and the necessity of notifying taxpayers before recovery. The need to fortify such settled principles stems from the widespread practice of attaching taxpayers' bank accounts immediately after orders assessing their liabilities are passed, thus frustrating their remedies before the appellate authorities. While tax authorities are unquestionably empowered to initiate coercive recovery against non-

compliant taxpayers, it is the aspect of conducting recovery without prior notice which sparks controversy.

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-02-2024 to 29-02-2024)

A Summary of Latest Judgments Delivered by the Supreme Court of Pakistan & Lahore High Court, Legislation/Amendment in Legislation and important Articles

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Hamza Rasheed Khan, etc. v. Election Appellate Tribunal, Lahore High Court, Lahore and others, etc.
Civil Appeal No. 984 of 2018 etc.
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._982_2018_19022024.pdf

Facts: All cases involving the same constitutional-legal question relating to the disqualification of a candidate under Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973 fixed before a Bench constituted by the Committee under the Supreme Court (Practice and Procedure Act), 2023.

Issues: i) Whether Article 17(2) and Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973 have equal standing?
ii) Whether the High Courts and the Supreme Court are empowered to strike down any law or legislate it?
iii) Whether the courts are empowered to make a negative declaration with regard to any of the matters mentioned in the said clause (f)?
iv) Whether the Judges have the ability to adjudicate the matters of morality?
v) Whether the courts have jurisdiction or authority to deal with the matter which the Constitution indeterminate or vague?

Analysis: i) Article 17(2) of the Constitution is a Fundamental Right whereas Article 62 prescribes who is qualified to contest elections. If any provision of the Constitution has the effect of curtailing or abridging any Fundamental Right it must not be interpreted to undermine the Fundamental Rights. Clauses (d), (e), (f) and (g) of Article 62(1) of the Constitution do not state that the disqualification of a candidate will be permanent. If clause (f) of Article 62(1) of the Constitution is read to mean that it imposes a permanent or lifetime disqualification then clauses (d), (e) and (g) too can be interpreted in like manner.
ii) Neither the High Courts nor the Supreme Court can rewrite any law, much less the Constitution, nor can they insert anything therein. The Constitution was carefully crafted by its framers and the domains of the Judiciary and that of the Legislature were kept separate. The High Courts and the Supreme Court may strike down any law which is unconstitutional, but they are not empowered to legislate.
iii) The law does not empower a court to make a negative declaration with regard to any of the matters mentioned in the said clause (f), that is, to declare that someone is not sagacious, is not righteous, is profligate, is dishonest or is not ameen. The Constitution does not even disqualify a criminal permanently from contesting elections, either under clause (g) or clause (h) of Article 63(1), therefore, it does not then stand to reason that indeterminate matters in respect of

which opinions may vary - good character, sagacity, righteousness and honesty - the disqualification would be permanent.

iv) Judges do not have the ability to adjudicate indeterminate matters of morality, nor are able to bifurcate morality from immorality, virtue from vice, and then proceed to meticulously weigh them. ...Someone devoid of the virtues and qualities of Article 62(1)(d), (e) and (f) may also come to acquire them or possessing them proceed to lose them. And who adjudicates would also matter; one Judge may consider that someone is of good character, etc. but another may have the opposite opinion. Matters which are mentioned in clauses (d), (e) and (f) of Article 62(1) are inherently subjective, and may also change. Earthly judges should adjudicate those matters which are discernible, determinable and which the law clearly expounds, and avoid the domain of Heaven.

v) If the Constitution leaves a matter indeterminate or vague it does not mean that jurisdiction and authority has been conferred upon the Courts. Moreover, in the absence of an objective standard, judges would be left to decide cases as per their individual preferences and varying perceptions of morality. If this is allowed it would be destructive of a clearly defined constitutional and legal order in which the Fundamental Rights of fair trial and due process, stipulated in Article 10A of the Constitution, would stand negated. Applying different standards would also negate equal treatment as mandated by Article 25(1) of the Constitution.

Conclusion: i) Article 17(2) and Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973 do not have equal standing.

ii) The High Courts and the Supreme Court may strike down any law which is unconstitutional, but they are not empowered to legislate.

iii) The law does not empower a court to make a negative declaration with regard to any of the matters mentioned in the said clause (f), that is, to declare that someone is not sagacious, is not righteous, is profligate, is dishonest or is not ameen.

iv) Judges do not have the ability to adjudicate indeterminate matters of morality, nor are able to bifurcate morality from immorality, virtue from vice, and then proceed to meticulously weigh them.

v) If the Constitution leaves a matter indeterminate or vague it does not mean that jurisdiction and authority has been conferred upon the Courts.

Additional Note:

Issues: i) Which court is competent to make the declaration mentioned in Article 62(1)(f)?

ii) Who has locus standi to seek declaration mentioned in Article 62 (1)(f) of Constitution?

iii)What is the procedure for making declaration mentioned in Article 62(1)(f) and is Article 10A of the Constitution attracted in making such declaration?

iv)What is the standard of proof required for making declaration mentioned in Article 62 (1)(f) of Constitution?

v) Whether the Article 62(1)(f) is a self-executory provision?
vi) Whether there is any provision in the Constitution that obligates Supreme Court to follow the law declared or the principle of law enunciated in its previous decision?

Analysis: i) In order to assert that a particular court has the jurisdiction to make the declaration mentioned in Article 62(1)(f), it is imperative to identify the provision in the Constitution or under any law that confers such jurisdiction… the Supreme Court, the High Courts, the Election Tribunals and the civil courts do not have the jurisdiction to make the declaration mentioned in Article 62(1)(f). … In no way can the court proceed to make the 'declaration' mentioned in Article 62(1)(f) itself in exercise of its quo warranto jurisdiction. Therefore, in quo warranto proceedings the Supreme Court and the High Courts do not have the jurisdiction to make the 'declaration' mentioned in Article 62(1)(f) of the Constitution…A bare reading of the provisions of Section 154 shows that the Election Tribunals have no jurisdiction to make the 'declaration' mentioned in Article 62(1)(f) that the returned candidate is not sagacious, righteous, non-profligate, honest and ameen. …There is at present no such law, neither statutory law nor common law, that confers such a civil right on any person. Therefore, until any law confers such a civil right the civil courts also have no jurisdiction to try a civil suit filed by a person, seeking against another person a 'declaration' as mentioned in Article 62(1)(f) of the Constitution.

ii) Since no law, including the Constitution, confers on any person a right to seek the declaration as mentioned in Article 62(1)(f), the civil courts have no jurisdiction to try a suit seeking such declaration…no person has locus standi to seek against another person the declaration mentioned in Article 62(1)(f).

iii) No court of law is, at present, competent to make the declaration mentioned in Article 62(1)(f) nor is there any law that prescribes the procedure for making such declaration, …that whenever any law confers the right on any person to seek, and the jurisdiction on any court of law to make, the said declaration, Article 10A of the Constitution will definitely stand attracted to the proceedings conducted in exercise of that jurisdiction for the enforcement of that right. Since any determination made in such proceedings shall have the effect of curtailing a fundamental right of the person in respect of whom such declaration is sought, the right to a fair trial and due process guaranteed by Article 10A shall also be available to such person.

iv) The declaration that a person is not sagacious, righteous, nonprofligate, honest and ameen is such that creates a serious stigma on the reputation of that person. The standard of proof in making such declaration should, therefore, not be a mere preponderance of probability applied generally in civil cases. Rather, the higher standard of 'clear and convincing proof' should be applied for making such declaration.

v) The legislature made it clear that Article 62(1)(f) is not self-executory and therefore cannot be applied by the special forums under the elections law or by

the constitutional courts to disqualify a person from contesting the election for, or holding, the office of a member of Parliament, unless a court of law has made a declaration that he is not sagacious, righteous, non-profligate, honest and ameen. Therefore, Article 62(1)(f) of the Constitution, in our considered opinion, is not a self-executory provision… Just as the declaration and the convictions mentioned in Article 63(1)(a), (g) and (h) are to be made by the courts of law that have been conferred jurisdiction, and in accordance with the procedure provided, by or under the laws enacted by the legislature, the declaration mentioned in Article 62(1)(f) is also to be made by a court of law that is conferred jurisdiction, and in accordance with the procedure provided, by or under the law enacted by the legislature. There is, at present, no such law. Until such law is enacted to make its provisions executory, Article 62(1)(f) stands on a similar footing as Article 62(1)(d), (e) and (g), and only serves as a guideline for the voters in exercising their right to vote.

vi) There is no provision in the Constitution that obligates Supreme Court to follow the law declared or the principle of law enunciated in its previous decision but rather it is the doctrine of stare decisis based on the rule of convenience, expediency and public policy which requires this Court to adhere to its previous decisions. We fully recognize the importance of this doctrine which helps maintain certainty and consistency, one of the essential elements of the rule of law, and believe that unless there are compelling reasons to depart, it must be adhered to. Though it is not possible to give an exhaustive list of the reasons that may justify such departure, one reason may be stated confidently, i.e., when the previous decision is found to be 'plainly and palpably wrong', the doctrine of stare decisis does not prevent a court from overruling it. This reason is also named as 'a clear manifestation of error'.

Conclusion: i) No court of law is competent to make the declaration mentioned in Article 62(1)(f) at present.

ii) No person has locus standi to seek against another person the declaration mentioned in Article 62(1)(f).

iii) See above in analysis clause.

iv) The higher standard of 'clear and convincing proof' should be applied for making such declaration.

v) The Article 62(1)(f) is not self-executory provision.

vi) There is no provision in the Constitution that obligates Supreme Court to follow the law declared or the principle of law enunciated in its previous decision but rather it is the doctrine of stare decisis based on the rule of convenience, expediency and public policy which requires this Court to adhere to its previous decisions.

2. **Supreme Court of Pakistan**
Hafiz Malik Kamran Akbar, etc. v. Muhammad Shafi (deceased) through LRs, etc.
Civil Petition No. 2341-L of 2016
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Muhammad Ali Mazhar, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2341_l_2016.pdf

Facts: Through this civil petition the petitioners have sought leave to appeal against the order passed by the High Court whereby the Application moved by them under Section 12 (2) of the Code of Civil Procedure, 1908 was dismissed.

Issues: i) Whether the Court is obligated to frame issues in every case while deciding application under section 12(2) of C.P.C.?
ii) What is the distinction between Order IX Rule 13 and Section 12 (2) of C.P.C.?
iii) What is the interpretation of the term ”person” under Section 12 (2) of C.P.C?
iv) Whether full particulars of fraud, misrepresentation or want of jurisdiction should be mentioned in the application under Sub-section (2) of Section 12 of C.P.C. and not vague allegations?
v) What was the purpose to amend the provision of section 12 of C.P.C?

Analysis: i) It is a well-settled exposition of law that for determining the grounds of alleged fraud, misrepresentation or want of jurisdiction, if any, raised in the application moved under section 12(2), C.P.C., the Court is not obligated in each and every case to frame issues mandatorily in order to record the evidence of parties and exactly stick to the procedure prescribed for decision in the suit but it always rests upon the satisfaction of the Court to structure its proceedings and obviously, after analyzing the nature of allegations of fraud or misrepresentation, the Court may decide whether the case is fit for framing of issues and recording of evidence, without which the allegations leveled in the application filed under Section 12 (2) C.P.C. cannot be decided.
ii) There is an eye-catching distinction between Order 9 Rule 13 and the niceties of Section 12 (2) C.P.C. In case of an ex-parte decree, the defendant may apply under Order 9 Rule 13 C.P.C. for setting aside the ex-parte decree and if the Court is satisfied that summons were not duly served or the defendant was prevented from any sufficient cause from appearing when the suit was called, the Court can make an order for setting aside the decree and appoint a day for proceedings with the suit. However, it is further provided in the same Rule that no ex-parte decree shall be set aside merely on the ground of any irregularity in the service of summons, if the Court is satisfied for the reason that the defendant had knowledge of the date of hearing in sufficient time to appear on that date to answer the claim.
iii) The term “person” provided under Sub-section (2) of Section 12 C.P.C cannot be interpreted narrowly to restrict its scope and application only to the judgment-debtor or his successors but it includes any person adversely affected by the judgment and decree or order of the Court without any distinction on whether he

was party to the original proceedings or not(...)

iv) In tandem, a person can challenge the validity of a judgment, decree, or order on plea of fraud and misrepresentation or want of jurisdiction under Sub-section (2) of Section 12 C.P.C. by making an application with full particulars of the fraud and misrepresentation to the Court which passed the final judgment, decree, or order and not by a separate suit.

v) In the case of Ghulam Muhammad v. M. Ahmad Khan and 6 others (1993 SCMR 662), this Court articulated that the availing of remedy under Section 12, C.P.C. is quite encumbersome. Sub-section (2) of Section 12, enacted by virtue of Ordinance 10 of 1980, expressly ordains that the validity of judgment and decree obtained by fraud and misrepresentation can be assailed through an application to the Court, which passed the final judgment, decree, order and not by a separate suit. It was further held that seemingly, a two-fold purpose is sought to be achieved by the amending provision; firstly from jurisprudential point of view it is the obligation of the Court on whom the fraud is practiced to undo the fraud. Such application lies before the Court passing the final judgment, decree or order. Since on appeal or revision, against the judgment, decree or order, obtained by fraud, the matter is re-opened before the Appellate or Revisional forum, as the case may be, the application has to be filed before the higher court seized of such matter. Secondly, by conferment of the remedy through a simple application, the litigating party is to a large extent, saved from the hardship and encumbersome procedure involved in prosecuting a suit, and the delay in the final decision thereof.

Conclusion: i) The Court is not obligated to frame issues in every case while deciding application under section 12(2) of C.P.C.

ii) See above in analysis portion.

iii) See above in analysis portion.

iv) Yes, full particulars of fraud, misrepresentation or want of jurisdiction should be mentioned in the application under Sub-section (2) of Section 12 of C.P.C. and not vague allegations.

v) See above in analysis portion.

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3. **Supreme Court of Pakistan**
Province of Punjab through Secretary (Primary & Secondary Healthcare Department), Lahore, etc. v. Habz Muhammad Kaleem-ud-Din.
Civil Petition No. 1893-L of 2021
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Muhammad Ali Mazhar, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1893_l_2021.pdf

Facts: Through this civil petition the petitioners have assailed the judgement passed by the High Court whereby the writ petition filed by the Respondent was allowed.

Issues: i) Whether the seniority and merit have to be considered upon promotion to a

selection post?
ii) Whether the jurisdiction of the High Court is barred to entertain matters relating to civil servants and retired civil servants?

Analysis: i) According to Sub-Section 6 of Section 8 of the Punjab Civil Servants Act, 1974 a post may either be a selection post or a non-selection post. As far as promotion to a selection post is concerned, the seniority and merit have to be considered whereas non-selection post is to be filled on the basis of seniority-cumfitness. According to Para 5 of the Promotion Policy, 2010, all posts in BPS-19 and above shall be selection post and will be filled on selection on merit basis. Para 8 of the said policy states that the seniority shall not carry extra weightage for determination of merit for promotion to selection posts.
ii) Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 ousts the jurisdiction of the High Courts and Civil Courts in the matters relating to the terms and conditions of a civil servant as the bar in the Constitution is absolute.

Conclusion: i) Yes, according to Section 8 (6) (a) of the Punjab Civil Servants Act, 1974, the seniority and merit have to be considered upon promotion to a selection post.
ii) Under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 the jurisdiction of the High Court is barred to entertain matters relating to civil servants and retired civil servants.

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4. **Supreme Court of Pakistan**
Zubair Saeed Sabri/Sain Zubair Shah v. The State thr. A.G. Islamabad and another
Criminal Petition for Leave to Appeal No.1359 of 2023
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Muhammad Ali Mazhar, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1359_2023.pdf

Facts: The petitioner sought bail in case registered against him initially for offence under section 295-C PPC and upon complainant's application, he was charged with sections 295-A and 298-B PPC.

Issues: i) Whether an offence under section 295-C PPC must be investigated by an officer not below the rank of SP?
ii) Whether police are required to obtain a search warrant before entering the house of any person?

Analysis: i) An offence under section 295-C of the PPC must be investigated by an officer not below the rank of SP, as stipulated by section 156A of the Code (…) Article 4(1) of the Constitution of the Islamic Republic of Pakistan ('the Constitution') mandates that individuals must be treated in accordance with law, which includes section 156A of the Code. And, Article 4(2)(a) states that 'no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.

ii) The police were required to obtain a search warrant before entering the house of the petitioner, but did not do so. The privacy of home shall be inviolable mandates Article 14(1) of the Constitution (…) without obtaining a search warrant the privacy of the petitioner's home was violated. Article 8 of the Constitution gives paramountcy to the Fundamental Rights (including Article 14), which cannot be abridged, and if any law is made in contravention thereof it states that it shall to such extent be void. Since we are dealing with offences under chapter XV of the PPC, that is, offences relating to religion, in this case relating to Islam, it would be appropriate to also consider relevant Islamic injunctions. Verse 27, chapter 24 (An-Nur) of the Holy Qur'an requires, that: 'Believers do not enter houses other than your own until you have asked permission…'

Conclusion: i) An offence under section 295-C PPC must be investigated by an officer not below the rank of SP.
ii) The police are required to obtain a search warrant before entering the house of any person.

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5. **Supreme Court of Pakistan**
Muhammad Riaz v. Muhammad Akram etc.
Civil Petition No.2148-L/2022
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Ravi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2178_l_2022.pdf

Facts: The petitioner is the vendee and the defendant in a suit for pre-emption filed by the respondents-plaintiffs. The trial court dismissed the suit vide judgment and decree. Appeal filed there-against was allowed and the suit was decreed by the first appellate court. Revision was filed by the vendee-defendant-petitioner but it was dismissed. Hence, this petition.

Issues: i) Whether it is essential to prove the conditions for the exercise of right of pre-emption in accordance with the provisions of Section 13 of the Punjab Pre-emption Act, 1991?
ii) When the pre-emptors should make demand of their desire to assert their right of pre-emption?
iii) Who can convey the information of the fact of sale?
iv) What are the parameters to establish the essential elements of Talb-i-Muwathibat?

Analysis: i) The right of pre-emption is a piratical right, and the pre-emptor must prove the essential conditions for the exercise of such right in accordance with the provisions of Section 13 of the Punjab Pre-emption Act, 1991. It goes without saying that a pre-emptor, without proving the performance of Talb-i-Mutuathibat and Tatb-i-Ishhad strictly in accordance with the provisions of Section 13 of the Act, 1991, cannot succeed… There is no cavil to the legal proposition that the

pre-emption is a personal right and a pre-emptor is required to prove it through his own statement as per law declared by Supreme Court.

ii) It is the established principle that as soon as the pre-emptors acquire knowledge of the sale of the pre-empted property, they should make an immediate demand of their desire and intention to assert their right of pre-emption without the slightest loss of time.

iii) The fact of the sale of the suit land is a fact that can be seen, such as, by observing or taking part in the sale transaction or by seeing the sale deed or sale mutation. The person who conveys the information of the fact of sale must be a person who has observed the fact of sale and it is he who can then pass on the said fact to another person(s).

iv) The chain of information regarding the sale, starting from the very first person with direct knowledge and passing it on to the person who lastly informs the pre-emptor, must be complete. Only the complete chain of the source of information of the sale can establish the essential elements of Talb-i-Muwathibat, which are: (i) the time, date and place when the pre-emptor obtained the first information of the sale, and; (ii) the immediate declaration of his intention by the pre-emptor to exercise his right of pre-emption, then and there, on obtaining such information.

Conclusion: i) It is essential to prove the conditions for the exercise of right of pre-emption in accordance with the provisions of Section 13 of the Punjab Pre-emption Act, 1991.

ii) As soon as the pre-emptors acquire knowledge of the sale of the pre-empted property, they should make an immediate demand of their desire and intention to assert their right of pre-emption without the slightest loss of time.

iii) The person who conveys the information of the fact of sale must be a person who has observed the fact of sale and it is he who can then pass on the said fact to another person(s).

iv) Only the complete chain of the source of information of the sale can establish the essential elements of Talb-i-Muwathibat.

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6. **Supreme Court of Pakistan**
Province of Punjab through Secretary Population Welfare Department, Lahore, etc. v. Shehzad Anjum, etc.
Civil Petition for Leave to Appeal No.1974-L of 2020
Mr. Justice Qazi Faez Isa, CJ, Mr. Justice Muhammad Ali Mazhar, Ms. Justice Musarrat Hilali.
https://www.supremecourt.gov.pk/downloads_judgements/c.p.l.a.1974_l_2020.pdf

Facts: The respondents filed a writ petition before the High Court, wherein direction was issued to the petitioners. The petitioners filed the Intra Court Appeal which was dismissed. Hence, through this petition for leave to appeal, they have assailed the judgment of Division Bench of the High Court.

Issues: i) Whether a party can file another writ petition for a new relief before the High Court, wherein, in the first writ petition which has been decided, the same cause of action and relief was available but was not claimed?
ii) Whether a person, who has claimed only his regularization in the first writ petition, can file another writ petition claiming that he be regularized from the date of appointment?

Analysis: i) If a party is not satisfied with the judgment of the first writ petition, it should have appealed the same or if the same was not implemented it should have sought its implementation, which could have been by invoking the contempt jurisdiction of the High Court. In any event on the same cause of action, and one which had been decided, another writ petition is not maintainable, and as no fresh cause of action had accrued to it.
ii) Where a person had only sought his regularization, and after he is regularized, he wanted the regularization to take effect from the date of his initial appointment on contract basis, he could not seek this relief subsequently because of the restriction in Order II, rule 2 of the Civil Procedure Code, 1908.

Conclusion: i) If a party is not satisfied with the judgment of the first writ petition, it should have appealed the same, another writ petition is not maintainable, and as no fresh cause of action had accrued to it.
ii) He could not seek this relief subsequently because of the restriction in Order II, rule 2 of the Civil Procedure Code, 1908.

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7. **Supreme Court of Pakistan**
Ali Khan v. Government of Pakistan through A.G. Islamabad and another
C.U.O. 18/2024 in C.P. Nil/2024
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Muhammad Ali Mazhar, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.u.o._18_2024_dt_21_02_2024.pdf

Facts: The petitioner filed a Constitutional petition pertaining to election, directly in Supreme Court of Pakistan in its original Jurisdiction, under Article 184(3) of the Constitution but prior to its filing its contents were broadcast on the electronic media and published in the newspapers. After filing of the petition, and having availed of the maximum publicity, the petitioner sought withdrawal of the same.

Issue: Whether withdrawal of a Constitutional petition after achieving the objective of exploiting a situation and seeking publicity, tantamount to the abuse of the process of the Court?

Analysis: The petitioner did not disclose the fact of being court martialed and mentions the rank which he held before being court martialed. He misused the rank which he had previously held in the Pakistan Army which he could not do so. The petitioner must have used his rank to attract publicity and to ensure that the

contents of his petition are widely broadcast in the media and published in newspapers…This petition has also consumed valuable court time, which is to be spent on deciding the cases of genuine litigants; not use the media for ulterior and nefarious purposes. The petitioner got prominent coverage and then the petition was abandoned and the petitioner left the country.

Conclusion: Withdrawal of a Constitutional petition after achieving the objective of exploiting a situation and seeking publicity, tantamounts to the abuse of the process of the Court.

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8. **Supreme Court of Pakistan**
Commissioner Inland Revenue, Lahore (In all cases) v. M/s Millat Tractors Limited, Lahore etc.
Civil Appeals Nos.87 to 106 of 2024 in Civil Petitions Nos.2447-L etc.
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2447_l_2022.pdf

Facts: These civil petitions for leave to appeal have been filed against a consolidated judgment of the Lahore High Court and two other orders (collectively referred to as the "impugned judgment"), whereby the Tax References filed by the petitioner department and Intra Court Appeals ("ICAs") filed by the taxpayers were decided against the petitioner department.

Issues: i) How income or value of assets of a person are treated as unexplained income and value of asset and added to income of taxpayer chargeable to tax?
ii) Whether provision of section 111(1) of ITO, 2001 is of inquisitorial nature?
iii) Whether initiation and culmination of proceedings under Section 111 of the Ordinance becomes necessary before action can be taken under Section 122 to amend assessments on the basis of proceedings undertaken under Section 111?
iv) What is effect on proceedings under section 111 & 122 if no opinion of Commissioner is formed against the taxpayer u/s 111 or opinion is materially different from what has been confronted to the taxpayer through the notice?
v) Whether a separate notice is required under Section 111 of the Ordinance or whether a notice under Section 122(9) is enough to initiate proceedings for amendment of the assessment on the grounds mentioned in Section 111 of the Ordinance?
vi) What the effect of the Explanation introduced in Section 111 of the Ordinance?
vii) What is purpose of introducing an explanation in an enactment?
viii) Whether an explanation can be given retrospective effect?
ix) When insertion or deletion of any provision in the rules or law will have retrospective effect?
x) Whether explanation added in section 111 of the Ordinance would have retrospective effect?
xi) When the time period provided vide two provisos added after section 122(9)

from the date of issuance of show cause notice for making an order under section 122 commences?

xii) Whether taxpayer can file revised return and deposit tax before issuance of notice u/s 122(9) and after issuance of notice u/s 111?

xiii) Whether simultaneous issuance of notices under section 111 and 122 (9) is of much consequence?

Analysis: i) Once the department has information resulting in an impression or understanding that the grounds in Section 111(1)(a) to (d) relating to unexplained income or asset are attracted, an explanation is called from the taxpayer. At this stage, the information available with the department is mere information. If, however, the taxpayer fails to render any explanation, or the explanation offered by the taxpayer is not satisfactory in the opinion of the Commissioner, the said liability becomes unexplained income and is to be added to the income of the taxpayer chargeable to tax.

ii) Through the opportunity of an explanation, the taxpayer can contest the allegations put to the taxpayer with regards to any of the grounds mentioned in Section 111(1)(a) to (d), where after, an opinion is to be formed by the Commissioner based on the said explanation, if any. As such, said provision is essentially of an inquisitorial nature where the taxpayer is confronted with the information available with the department and an explanation is sought, and the resulting opinion of the Commissioner is not an adverse order per se but can be used to pass an adverse order against the taxpayer by adding the unexplained income to the income of the taxpayer chargeable to tax.

iii) Pursuant to Section 122(5) of the Ordinance, the terminus a quo for initiation of proceedings under Section 122 is when the Commissioner, on the basis of definite information acquired from an audit or otherwise, is of the opinion that any of the grounds mentioned in Section 122(5)(i), (ii) or (iii) is applicable. Thereafter, a notice under Section 122(9) of the Ordinance, specifying the above ground(s), is sent to the taxpayer. If the taxpayer satisfactorily responds to the notice sent under Section 122(9), the proceedings can be dropped. Where, however, the response is not satisfactory, and the Commissioner is satisfied that any of the grounds in Section 122(5) are applicable, the Commissioner can amend the assessment order under Section 122(1) or further amend an amended assessment under Section 122(4) read with Section 122(5). As such, for initiation of proceedings under Section 122, the Commissioner must assess if any of the grounds under Section 122(5) are applicable, and such an assessment is to be based on definite information acquired from an audit or otherwise, which is the prerequisite to attract the provisions of Section 122(5) of the Ordinance. Section 111(1) is mere information. It is only after the taxpayer is confronted with this information through a separate notice by calling for an explanation, and when no explanation is offered or the explanation is not satisfactory in the opinion of the Commissioner under Section 111(1), that it transforms or crystallizes into “definite information” for the purposes of action under Section 122(5) for

amendment of assessment under Section 122. The taxpayer will then be confronted with the grounds applicable under Section 122(5) through a notice under Section 122(9) of the Ordinance. As such, where the Commissioner has formed an opinion against the taxpayer as to the fulfillment of one of the grounds mentioned in Section 111(1)(a) to (d) of the Ordinance, and is of the view that any of the grounds in Section 122(5) is applicable, the process under Section 122 is to be initiated to amend assessments through a notice under Section 122(9). Thus, unless the proceedings under Section 111(1) are initiated and completed, Section 122(5) cannot be given effect to and no notice under Section 122(9) can be issued for the purposes of amending an assessment through an addition contemplated under Section 111.

iv) The proceedings under the notice issued under Section 122(9) can only be formally initiated when the requirement of definite information is satisfied under Section 122(5) after finalization of the proceedings under Section 111 through an opinion of the Commissioner. Therefore, where no opinion is formed against the taxpayer under Section 111, the proceedings under both provisions i.e., Sections 111 and 122 would lapse, and the notice under Section 122(9) would be of no legal effect. Where, however, there is an opinion formed against the taxpayer as definite information for the purposes of Section 122(5), the proceedings on the notice issued under Section 122(9) can formally proceed and shall be deemed to have commenced. It must also be noted that where the opinion formed against the taxpayer under Section 111 is materially different from what has been confronted to the taxpayer through the notice already issued under Section 122(9), and the Commissioner is of the view that another or different ground under Section 122(5) is applicable, a fresh or supplementary show cause notice under Section 122(9) must be issued to the taxpayer by confronting such ground(s) to the taxpayer.

v) Before an assessment can be amended under Section 122 on the basis of Section 111, the proceedings under Section 111(1) are to be initiated, the taxpayer is to be confronted with the information and the grounds applicable under Section 111(1) through a separate notice under the said provision, and then the proceedings are to be culminated through an appropriate order in the shape of an opinion of the Commissioner. This then becomes definite information for the purposes of Section 122(5), provided the grounds mentioned in Section 122(5) are applicable. The taxpayer is then to be confronted with these grounds through a notice under Section 122(9) and only then can an assessment be amended under Section 122. We, however, underline and clarify that even where a notice under Section 111 is issued simultaneously with a notice to amend an assessment under Section 122(9) of the Ordinance, no proceedings can be undertaken under the latter until the proceedings under Section 111 are finalized and result in an opinion against the taxpayer. This is because, even if some basis for action under Section 111 is mentioned in a notice under Section 122(9), it cannot constitute definite information for the purposes of Section 122(5).

vi) On a plain reading of the aforesaid Explanation, it appears that it is couched in

clarificatory and declaratory terms for "removal of doubt". However, we note that the intention behind the Explanation and the effect of adding the Explanation is to take away the right to a separate notice and proceedings under Section 111 if the grounds under Section 111(1)(a) to (d) are confronted to the taxpayer through a notice under Section 122(9) of the Ordinance. Therefore, in essence, it abridges the right to a separate notice and proceedings under Section 111 of the Ordinance, which was the requirement of the law as noted above. As a consequence, the Explanation takes away a substantive right of separate proceedings of the taxpayer, which otherwise existed prior to the introduction of the Explanation in Section 111.

vii) The purpose of an Explanation is ordinarily to explain some concept or expression or phrase occurring in the main provision. It is not uncommon for the legislature to accord either an extended or restricted meaning to such concept or expression by inserting an appropriate Explanation. Such a clarificatory provision is to be interpreted according to its own terms having regard to its context and not as to widen the ambit of the provision. As a general rule, an explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows, it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision. The object of adding an Explanation to a statutory provision is only to facilitate its proper interpretation and to remove confusion and misunderstanding as to its true nature. It is relied upon only as a useful guide or in aid to the construction of the main provision.

viii) Where the effect of the Explanation warps out of its normal purpose, and acts as a substantive enactment or deeming provision, or enlarges substantive provisions of law or creates new liabilities, such an Explanation cannot be given retrospective effect unless the express language of the Explanation warrants such an interpretation. It is settled law that a change in substantive law which divests and adversely affects vested rights of the parties shall always have prospective application unless by express word of the legislation and/or by necessary intendment/implication such law has been made applicable retrospectively.

ix) Where an insertion or deletion of any provision in the rules or the law is merely procedural in nature, the same would apply retrospectively but not if it affects substantive rights which already stood accrued at the time when the un-amended rule or provision was in vogue. A provision curtailing substantive rights does not have retroactive operation unless the legislature elects to give it retrospective effect. Thus, where existing rights are affected or giving retroactive operation causes inconvenience or injustice, the Court will not favour an interpretation giving retrospective effect even where the provision is procedural.

x) The Explanation added in Section 111 of the Ordinance divests and affects a substantive right of the taxpayer to a separate notice and proceedings under Section 111, the same would not have retrospective effect and would apply prospectively. Therefore, the Explanation would not be applicable to the matters at hand as they pertain to tax years before the Explanation was introduced in

Section 111.

xi) We are also cognizant of the fact that two provisos have been added after Section 122(9) which provide for a time period from the date of issuance a show cause notice for making an order under Section 122. In view of what has been held above, the said time period is to be considered as commencing on the day that the taxpayer is confronted with the opinion formed by the Commissioner under Section 111(1), as it is only then that the proceedings under Section 122 are to be formally taken up. In our view, this reconciliation harmonizes Section 111, its Explanation and Section 122(5) of the Ordinance.

xii) Our view that the process could only be lawfully undertaken in two steps is further fortified from Section 114(6A) of the Ordinance, which extends a right to the taxpayer that the taxpayer can voluntarily file a revised return and deposit the tax before the issuance of a notice under Section 122(9) of the Ordinance, and consequently avoid the penalty stipulated in Section 182 of the Ordinance vis-à-vis the provisions of Section 111 of the Ordinance. If it is held that both the proceedings under Section 111 and 122 are now subsumed, the taxpayer would be deprived of this right which can neither be the legislative intent and nor legally justified. Accordingly, this right, which the legislature has thoughtfully extended to the taxpayers, could only be protected and preserved if the proceedings under Section 111 of the Ordinance are initiated first and the taxpayer could opt to either revise his return with voluntary payment of tax without penalty or contest the proceedings and forego the said right.

xiii) The simultaneity of notices issued under Section 111 and 122(9) is not of much consequence and the proceedings under Section 111 have to proceed first and be finalized before proceedings under Section 122 are formally taken up. After the introduction of the Explanation in Section 111 in the year 2021, a notice encompassing both the grounds under Section 111(1) and Section 122(5) can be issued under Section 122(9), however, the proceedings under Section 111 still have to be concluded first and thereafter the remaining part of the notice under Section 122(9) can be given effect to.

Conclusion: i) Section 111(1) provides that where any of the grounds in Section 111(1)(a) to (d) are applicable, and the taxpayer offers no explanation or the explanation provided, in the opinion of the Commissioner, is not satisfactory, this unexplained income or value of asset(s) shall be included in the income of the person chargeable to tax.

ii) Yes, provision of section 111(1) of ITO, 2001 is of inquisitorial nature.

iii) Yes, the initiation and culmination of proceedings under Section 111 of the Ordinance becomes necessary before action can be taken under Section 122 to amend assessments on the basis of proceedings undertaken under Section 111.

iv) See under analysis no. iv.

v) See under analysis no. v.

vi) The intention behind the Explanation and the effect of adding the Explanation

is to take away the right to a separate notice and proceedings under Section 111 if the grounds under Section 111(1)(a) to (d) are confronted to the taxpayer through a notice under Section 122(9) of the Ordinance.

vii) The purpose of an Explanation is ordinarily to explain some concept or expression or phrase occurring in the main provision.

viii) Where the effect of the Explanation warps out of its normal purpose, and acts as a substantive enactment or deeming provision, or enlarges substantive provisions of law or creates new liabilities, such an Explanation cannot be given retrospective effect unless the express language of the Explanation warrants such an interpretation.

ix) Where an insertion or deletion of any provision in the rules or the law is merely procedural in nature, the same would apply retrospectively but not if it affects substantive rights which already stood accrued at the time when the un-amended rule or provision was in vogue.

x) The Explanation added in Section 111 of the Ordinance divests and affects a substantive right of the taxpayer to a separate notice and proceedings under Section 111, the same would not have retrospective effect and would apply prospectively.

xi) The said time period is to be considered as commencing on the day that the taxpayer is confronted with the opinion formed by the Commissioner under Section 111(1), as it is only then that the proceedings under Section 122 are to be formally taken up.

xii) Yes, the taxpayer can file revised return and deposit tax before issuance of notice u/s 122(9) and after issuance of notice u/s 111.

xiii) The simultaneity of notices issued under Section 111 and 122(9) is not of much consequence and the proceedings under Section 111 have to proceed first and be finalized before proceedings under Section 122 are formally taken up.

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9. **Supreme Court of Pakistan**
Taisei Corporation v. A.M. Construction Company (Pvt) Ltd.
Civil Appeal No.722 of 2012 etc.
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Athar Minallah Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._722_2012.pdf

Facts: The appellant ("Taisei"), a Japanese company, was awarded a contract by the National Highway Authority of Pakistan for carrying out certain works in the Province of Baluchistan, Pakistan. Taisei entered into a subcontract with the respondent ("AMC"), a Pakistani company, for doing some part of the Project. It was agreed in the subcontract that the governing law of the subcontract shall be the law in force at the time in Pakistan, and that any dispute arising between the parties would be settled through arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce ("ICC"), to be held at Singapore. In the course of performing their respective obligations under the subcontract, some disputes arose between the parties. AMC referred the matter to

ICC for arbitration as per the arbitration agreement incorporated in the subcontract, and after holding the arbitration proceedings in Singapore, the arbitrator delivered the award. In order to challenge the Award, AMC filed an application under Section 14 of the Arbitration Act 1940 ("1940 Act") in the Civil Court, Lahore praying for a direction to the arbitrator to file the Award and the record of the arbitration proceedings. Taisei appeared before the Civil Court, Lahore, and filed an application under Order VII, Rule 10 of the Code of Civil Procedure 1908 ("CPC"), to return the application of AMC made under the 1940 Act which was dismissed. The Lahore High Court upheld the order of the Civil Court and dismissed the revision petition of Taisei. Taisie then sought leave from this Court to appeal the judgment of the Lahore High Court, which was granted. In addition to the filing of the application under Order VII, Rule 10, CPC, in the Civil Court, Lahore, Taisei filed a petition under Section 6 of the 2011 Act in the High Court of Sindh at Karachi for recognition and enforcement of the Award. For the rejection of this petition of Taisei, AMC filed an application under Section 11 and Order VII, Rule 11, CPC. A Single Bench of the Sindh High Court allowed AMC's application and dismissed Taisei's petition. Taisei preferred an intra-court appeal, which was allowed by a Division Bench of the Sindh High Court. The Division Bench remanded the matter to the Single Bench to proceed with Taisei's petition in accordance with the 2011 Act, by holding that since an appeal against the Lahore High Court's judgment was pending before the Supreme Court, that judgment did not operate as res judicata. This decision of the Division Bench has been challenged by AMC in Civil Appeal.

Issues:

i) What is concept of "pro-enforcement bias" and what is its purpose?

ii) Whether the statement made by Supreme Court in Hitachi, that an award made on an arbitration agreement governed by the law of Pakistan is not a foreign award, is still valid?

iii) What is meaning of term "foreign arbitral award" in the EAA& FA Act 2011?

iv) Whether an arbitral award can only be treated as foreign arbitral award if it passes the test of being foreign arbitral award under both Acts i.e. the Arbitration (Protocol and Convention) Act, 1937 & EAA& FA Act 2011?

v) Whether addition or omission of the word "foreign" with "arbitral award" in the definition of the term "foreign arbitral award" given in Section 2(e) of the 2011 Act does make any difference in the scope of the definition?

vi) What is effect of use of verb "means" by legislature in defining any word, term or expression whether the definition in Section 2(e) of the 2011 Act is restrictive and exhaustive?

vii) Whether the 2011 Act applies retrospectively to the Award made in arbitration proceedings commenced before its enforcement?

viii) How a new law is construed as to its prospective and retrospective effect?

ix) What is consequence of retrospective effect given by the section 1(3) of the 2011 Act to the arbitration agreement?

x) What is effect of using word "and" between clauses (a) & (b) of section 10 (2) of the 2011 Act?

xi) What is status of the phrase “which are not foreign arbitral awards within the meaning of section 2 of this Act” in section 10(2) (b) of the 2011 Act?
xii) What is object of the saving provisions of Section 10(2) of the 2011 Act?
xiii) Whether a party has a vested right to challenge the validity of an award under sections 30 & 33 of the 1940 Act, If the arbitration proceedings commenced at time when neither the 2011 Act nor any of its predecessor ordinances was in force?
xiv) Can a provincial law deal with a matter that falls within the scope of the subject of “international arbitration” allocated exclusively to the Federal Legislature after the 18th amendment?
xv) Whether Courts in Pakistan can enter into the exercise of examining the merits of a foreign award on the points of facts or law?
xvi) What is difference between approach of recognition and enforcement of a foreign arbitral award under Geneva Convention and New York convention?
xvii) Whether recognition and enforcement of arbitral award in Pakistan can be refused by the courts of Pakistan on the public policy ground?
xviii) Whether the law declared by court through interpretation has prospective or retrospective effect?
xix) Whether the judgment of High Court operates as res judicata if the appeal against such judgment is pending before Supreme Court?

Analysis: i) The approach of minimal interference and support for the arbitral process is enshrined in the concept of "pro-enforcement bias", which refers to the inclination of legal frameworks, such as the New York Convention and national laws, to facilitate the enforcement of arbitral awards. This bias underscores the commitment to uphold the integrity of arbitration as a means of settling international disputes by limiting the grounds on which enforcement can be refused and placing the burden of proof on the party resisting enforcement. The courts' role is to interpret these provisions narrowly to promote certainty and predictability in international transactions. This bias is not about unjustly favoring one party over another but is aimed at promoting the effectiveness and efficiency of arbitration as a dispute resolution mechanism. The pro enforcement bias underscores the commitment of the legal system, embodied in international conventions, like the New York Convention, to respect and uphold the parties' agreement to arbitrate and to ensure that the outcome of such arbitrations (the arbitral awards) are recognized and enforced with minimal interference. This bias is critical in providing parties with the confidence that their decisions to arbitrate disputes will be supported by courts around the world, thus enhancing the attractiveness of arbitration as a method of resolving international commercial disputes. This enforceability is crucial for the fluidity of international trade, providing businesses with the certainty and security needed to engage in cross-border transactions.
ii) Section 9(b) of the 1937 Act, since repealed, had clearly stated that nothing in the said Act was to apply to any award made on an arbitration agreement

governed by the law of Pakistan. In view of these provisions of Section 9(b) of the 1937 Act, this Court decided in Hitachi that "the two awards in question cannot be treated as foreign awards as the same are made on an arbitration agreement governed by the laws of Pakistan". That decision was thus not based on some principle of general application, enunciated by the Court in the exercise of its judicial power, but on the specific provision of a statutory law then in force in Pakistan. The 1937 Act has been repealed and replaced by the 2011 Act. There is no provision in the 2011 Act similar to the provisions of Section 9(b) of the 1937 Act. With the change of law, the statement made by this Court in Hitachi, that an award made on an arbitration agreement governed by the law of Pakistan is not a foreign award, has lost its efficacy.

iii) A combined reading of the above three definitions under section 2(b) (c) & (e) of the Act 2011 leaves little room to speculate or argue as to what the term "foreign arbitral award" means for determining the applicability of the 2011 Act to an award. As per these definitions, an arbitral award made in a State which is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 or in such other State as may be notified by the Federal Government in the official Gazette, is a "foreign arbitral award" for applicability of the 2011 Act. Nothing more is required to make an award the "foreign arbitral award" for applicability of the provisions of the 2011 Act. The law governing the main contract between the parties, the law governing the arbitration agreement, and the law governing the arbitration proceedings are all irrelevant and extraneous in determining the status of an arbitral award under the 2011 Act. In defining a "foreign arbitral award" for applicability of the 2011 Act, the legislature has adopted a pure "territorial approach" and has made in this regard the "seat of arbitration" the sole criterion. Not only the governing laws but also the nationality of the parties to the award are irrelevant in determining the status of an arbitral award under the 2011 Act.

iv) If an arbitral award passes the test of being a foreign arbitral award under both these Acts, only then as per his (counsel) argument it can be treated as a foreign arbitral award for applicability of the 2011 Act. In making this argument, the learned counsel failed to note that the 1937 Act has been repealed by the 2011 Act; it is no longer the law of the land. A court cannot administer a repealed law, except to the extent specified by the legislature itself in the repealing law or some other general law providing the effect of the repeal of laws.

v) The addition or omission of the word "foreign" with "arbitral award" in the definition of the term "foreign arbitral award" given in Section 2(e) of the 2011 Act does not make any difference in the scope of the definition. As an award made in a foreign country is generally called a foreign award, this word has been used only for emphasis and clarity that not all foreign awards but only those foreign awards that are made in a Contracting State or such other State as may be notified by the Federal Government in the official Gazette, shall be dealt with as "foreign arbitral awards" under the 2011 Act.

vi) We all know that when the legislature employs the verb "means" in defining

any word, term or expression, the definition provided is restrictive and exhaustive, and nothing else can be added to the same. Such definition being itself the most authentic expression of the legislature's intent as to the meaning of a particular word used in the law enacted by the legislature is binding on the courts and leaves no room for them to discover by way of interpretation some other intent of the legislature. We cannot, therefore, read anything further into the definition of "foreign arbitral award" given by the legislature in Section 2(e) of the 2011 Act.

vii) A bare reading of these provisions shows that the 2011 Act has prescribed no cut-off date for its retrospective applicability to arbitration agreements and has brought into the scope of its applicability all arbitration agreements made at any time before the date of its commencement. However, it has restricted its retrospective applicability to only those foreign arbitral awards that have been made on or after 14 July 2005, not before that date. This date of 14 July 2005 is actually the date when the first Ordinance for recognition and enforcement of foreign arbitral awards was promulgated in Pakistan, to implement the Convention through domestic legislation. After that, eight more Ordinances were promulgated before the enactment of the 2011 Act, and in all those Ordinances as well as in the 2011 Act, the date for retrospective applicability of the new law to foreign arbitral awards was kept the same, i.e., 14 July 2005.

viii) The well-settled principle in our jurisdiction is that a new law that only deals with the procedure and does not in any way affect the substantive rights of the parties applies both prospectively to future proceedings as well as retrospectively to pending proceedings. However, a law that takes away or abridges the substantive rights of the parties only applies prospectively unless either by express enactment or by necessary intendment the legislature gives to it the retrospective effect. The proper approach, therefore, to the construction of a statute as to its prospective or retrospective applicability, in the absence of legislature's express enactment or necessary intendment, 'is not to decide what label to apply to it, procedural or otherwise, but to see whether the statute if applied retrospectively to a particular type of case would impair existing rights and obligations Such an examination, however, is needed only where the legislature has not, by express enactment or necessary intendment, provided for retrospective effect; as the legislature can by express enactment or necessary intendment also affect the existing rights and obligations. The legislature which is competent to make a law also has the power to legislate it retrospectively and can by legislative fiat take away even the vested rights.

ix) Because of the retrospective effect given by Section 1(3) of the 2011 Act, all courts in Pakistan are to recognize and enforce arbitration agreements, wherein the parties have agreed to have the arbitration held in a Contracting State, within the scope of the provisions of Section 4 of the 2011 Act, not of Section 34 of the 1940 Act, despite that such agreements have been made before the commencement of the 2011 Act.

x) The word "and", coordinating conjunction, has been used therein in its usual meaning conjunctively, not disjunctively, to connect the two clauses (a) and (b).

To come within the compass of the saving provisions of Section 10(2), a foreign arbitral award must therefore fulfill both the conditions mentioned in clauses (a) and (b), i.e., (a) it must have been made before the date of commencement of the 2011 Act, and (b) it must fall within the meaning of "foreign award" as defined in Section 2 of the 1937 Act.

xi) The phrase "which are not foreign arbitral awards within the meaning of section 2 of this Act" is like a proviso to the saving provisions and has qualified them in their scope and applicability. This phrase has exempted from the purview of the saving provisions those foreign awards which though fulfill both the conditions mentioned in clauses (a) and (b) but they are also foreign arbitral awards within the meaning of Section 2 of the 2011 Act. It means that an award which is a foreign arbitral award within the meaning of Section 2 of the 2011 Act shall not come within the scope of the saving provisions and shall therefore be dealt with in accordance with the provisions of the 2011 Act, not of the 1937 Act.

xii) The object of the saving provisions of Section 10(2) of the 2011 Act, in our opinion, is to save certain foreign arbitral awards, after the repeal of the 1937 Act, from falling within the scope of the 1940 Act.

xiii) AMC's right to challenge the validity of the Award under Sections 30 and 33 of the 1940 Act accrued with the commencement of the arbitration proceedings has been taken away by the legislature in the exercise of its legislative power by giving effect to the 2011 Act on all foreign arbitral awards irrespective of the fact, whether they have been made in arbitration proceedings commenced either before or after the 2011 Act came into force. What the legislature intended to save from the operation of the 2011 Act, it provided in Section 10(2) of the 2011 Act. The Award involved in the present case, we have found above, does not come within the purview of Section 10(2) of the 2011 Act.

xiv) No doubt, after the 18th amendment, the subject of "arbitration" other than "international arbitration" has fallen into the domain of the Provincial Legislatures. The question is whether the arbitration made in a foreign country, of a dispute that is governed by the domestic law, as it is in the present case, comes within the compass of "international arbitration"… Certainly a provincial law cannot deal with a matter that falls within the scope of the subject of "international arbitration" allocated exclusively to the Federal Legislature after the 18th amendment. The 1940 Act, a provincial law after the 18th amendment that came into force on 19 April 2010, cannot deal with international arbitration and any award made therein.

xv) In the 1937 Act there was a scope for the courts to enter into the merits of the award; for it provided that the enforcement of a foreign award would be refused if its enforcement was contrary to the law of Pakistan, in addition to the ground of its being contrary to the public policy. The New York Convention implemented in Pakistan by the 2011 Act, contains no ground as to the invalidity of a foreign award or its being against the law of the Contracting States, to refuse its recognition and enforcement and thus leaves no room for the courts of a Contracting State to enter into the exercise of examining the merits of a foreign

award on the points of facts or law.

xvi) In the context of recognition and enforcement of foreign arbitral awards, there has been a global shift from a standard enforcement of awards towards a more "pro-enforcement" approach. The New York Convention, implemented in Pakistan by the 2011 Act, replaced the Geneva Convention on the Execution of Foreign Arbitral Awards, 1927 ("Geneva Convention") incorporated in Pakistan under the 1937 Act, and sought to overcome the hurdles that an award-creditor had to meet under the previous regime for the recognition and enforcement of a foreign arbitral award. Its main objective is to facilitate the recognition and enforcement of foreign arbitral awards to the greatest extent possible and to set out a maximum level of control that the Contracting States may exert over such awards. This shift and the underlying objective become evident in the comparison of the New York Convention with the preceding Geneva Convention. Firstly, the Geneva Convention, though a pivotal step for the standardization of enforcement procedures with regards to foreign arbitral awards, had placed the burden on the party relying on the arbitral award to prove five cumulative conditions in order to obtain recognition and enforcement, as required under Article 1 of the Geneva Convention. Conversely, in accordance with its objective, the New York Convention grants the Courts of the Contracting States the discretion to refuse to recognize and enforce a foreign arbitral award only on the grounds listed in Article V of the Convention and places the burden to prove those grounds on the party opposing the recognition and enforcement of the award. Article V(1) provides five grounds whereby the recognition and enforcement of an award may be refused at the request of the party against whom it in invoked, and Article V(2) lists two further grounds on which the Court may refuse enforcement on its own motion. The ultimate burden of proof, however, remains on the party opposing recognition and enforcement. It is, therefore, only when the party against whom the award is invoked discharges this burden that a challenge may be sustained against the recognition and enforcement of an award. Further, Article 2 of the Geneva Convention had provided that even if the conditions laid down in Article 1 are fulfilled, the recognition and enforcement of the award "shall" be refused if the Court is satisfied that any of the grounds provided under this provision, including if the award has been annulled in the country in which it was made27, are fulfilled. Whereas, the New York Convention imposes no such positive obligation to deny the recognition or enforcement of international arbitral awards. Instead, Articles V(1) and (2) provide exceptions to an affirmative obligation of recognizing and enforcing a foreign arbitral award indicating that this "may" be refused provided the grounds enumerated therein are proved, therefore, not being affirmative obligations in their own right. This interpretation is also premised in the cumulative reading of Article III of the Convention, which provides that each Contracting State "shall" recognize arbitral awards as binding and enforce awards in accordance with the Convention, and Article V, which provides that recognition and enforcement of awards may be refused "only" if one of the specified exceptions apply. Therefore, the language of Article V for refusing

recognition and enforcement of foreign arbitral awards is permissive and not mandatory, and the exceptions stated therein are exhaustive and construed narrowly in view of the public policy favouring the enforcement of such foreign arbitral awards. The Courts may nonetheless recognize and enforce the award even if some of the exceptions exist. . In addition to the cumulative requirements under Article 1 and the grounds available to refuse recognition and enforcement under Article 2, Article 3 of the Geneva Convention went further and provided that if the party against whom the award has been made, proves that under the law governing the arbitration procedure there is a ground, other than the grounds in Articles 1 and 2, entitling him to contest the validity of the award in the Court, the Court may, if it thinks fit, either refuse recognition or enforcement of the award or adjourn the consideration thereof, giving the party reasonable time within which to have the award annulled by the competent tribunal. The New York Convention, however, restricts the grounds for refusing recognition and enforcement to only those specifically mentioned in Article V. These grounds set out a "maximum level of control" that the Contracting States may exert over foreign arbitral awards. Article 1(e) of the Geneva Convention required that it had to be positively demonstrated that recognition and enforcement of the award was not contrary to public policy or the "principles of law" of the country in which it is sought to be relied upon. The New York Convention omits any reference to an award being contrary to "principles of law", a notable omission highlighting the pro-enforcement bias of the New York Convention. Another pro enforcement change in the New York Convention was the elimination of the requirement of "double exequatur". A reference to "final" award, contained in the Geneva Convention38, was replaced with a requirement for a "binding" award in Article V(1)(e) of the New York Convention… Additionally and importantly, the New York Convention provides that a Contracting State may, by its domestic law, reduce the grounds for refusal to recognize and enforce a foreign arbitral award and make the provisions more favourable for a party relying upon such award, but cannot add further grounds.

xvii) The recognition and enforcement of a foreign arbitral award may be refused by the courts of Pakistan on the public policy ground only where it would violate the "most basic notions of morality and justice" prevailing in Pakistan. The public policy ground cannot be used to examine the merits of a foreign arbitral award or to create more grounds of defence that are not provided for in the Convention,45 such as misapplication of the law of Pakistan by the arbitrator in making the award or the arbitrator's decision being contrary to the law of Pakistan.

xviii) While interpreting a provision of law or construing its effect, a constitutional court only declares what the law is and does not make or amend it. The law so declared by the court, therefore, as a general principle applies both prospectively to future cases and as well as retrospectively to pending cases, including the one in which it is declared. It is only as an exception to this general principle that while considering the possibility of some grave injustice or inconvenience due to the retrospective effect, the courts sometimes provide for

the prospective effect of their judgments from such date as they think just and proper in the peculiar facts and circumstances of the case.

xix) In this appeal, we find that the impugned judgment of the Division Bench of the Sindh High Court is completely correct in holding that since an appeal against the Lahore High Court's judgment was pending before this Court, that judgment did not operate as res judicata. The appeal pending before this Court could at most attract the applicability of the principle of res sub judice and the Single Bench of the Sindh High Court could have stayed under Section 10, CPC, the proceeding on Taisei's petition filed under the 2011 Act, till decision of the pending appeal by this Court. But as this Court itself had asked the Single Bench to decide Taisei's petition, the bar of the principle of res sub judice also stood eclipsed.

Conclusion: i) See analysis no. i.

ii) With the change of law, the statement made by Supreme Court in Hitachi, that an award made on an arbitration agreement governed by the law of Pakistan is not a foreign award, has lost its efficacy.

iii) See under analysis no. iii.

iv) No, it is incorrect that an arbitral award can only be treated as foreign arbitral award if it passes the test of being foreign arbitral award under both Acts i.e. the Arbitration (Protocol and Convention) Act, 1937 & EAA& FA Act 2011.

v) The addition or omission of the word "foreign" with "arbitral award" in the definition of the term "foreign arbitral award" given in Section 2(e) of the 2011 Act does not make any difference in the scope of the definition.

vi) When the legislature employs the verb "means" in defining any word, term or expression, the definition provided is restrictive and exhaustive, and nothing else can be added to the same. The definition in Section 2(e) of the 2011 Act is restrictive and exhaustive.

vii) See under analysis no. vii.

viii) See under analysis no. viii.

ix) See under analysis no. ix.

x) The word "and", coordinating conjunction, has been used therein in its usual meaning conjunctively, not disjunctively, to connect the two clauses (a) and (b).

xi) The phrase "which are not foreign arbitral awards within the meaning of section 2 of this Act" is like a proviso to the saving provisions and has qualified them in their scope and applicability.

xii) The object of the saving provisions of Section 10(2) of the 2011 Act, in our opinion, is to save certain foreign arbitral awards, after the repeal of the 1937 Act, from falling within the scope of the 1940 Act.

xiii) The right to challenge the validity of the Award under Sections 30 and 33 of the 1940 Act accrued with the commencement of the arbitration proceedings has been taken away by the legislature in the exercise of its legislative power by giving effect to the 2011 Act on all foreign arbitral awards irrespective of the fact, whether they have been made in arbitration proceedings commenced either before or after the 2011 Act came into force.

xiv) Certainly a provincial law cannot deal with a matter that falls within the scope of the subject of "international arbitration" allocated exclusively to the Federal Legislature after the 18th amendment.
xv) See under analysis no. xv.
xvi) See under analysis no. xvi
xvii) The recognition and enforcement of a foreign arbitral award may be refused by the courts of Pakistan on the public policy ground only where it would violate the "most basic notions of morality and justice" prevailing in Pakistan.
xviii) See under analysis no. xviii.
xix) The judgment of High Court does not operates as res judicata if the appeal against such judgment is pending before Supreme Court.

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10. **Supreme Court of Pakistan**
Commissioner Inland Revenue, Islamabad v. M/s Fauji Foundation & another
Civil Appeal No. 2434 of 2016
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._2434_2016.pdf

Facts: A notice u/s 122(9) of the Income Tax Ordinance, 2001, was served upon the taxpayer to show cause as to why for amendment of assessment u/s 122(1) read with 122(5) of the Ordinance and after taking objections, tax payer was ordered to pay balanced tax. The Commissioner of Inland Revenue (Appeals) and Appellate Tribunal Inland Revenue upheld the decision of taxation officer. The taxpayer approached High court u/s 133 of ITO, 2001 where it was held that tribunal arrived at wrong conclusion. Hence, this appeal.

Issues: i) What is a two-pronged test for bringing income under the head "income from business" prescribed u/s 18 (1) (d) of ITO, 2001?
ii) What are two conditions to be complied with before a taxation officer acquires jurisdiction u/s 122(9) of ITO, 2001 in respect of an assessment beyond the period of five years from the end of the relevant financial year?
iii) How a jurisdiction given under a statute ought to be exercised?
iv) Whether an action u/s 122 of ITO, 2001 can be justified on the ground that the opinion of the Taxation Officer regarding chargeability of income is different from the one under which it was originally assessed in the deemed order under section 120(1) of the Income Tax Ordinance, 2001?

Analysis: i) It would appear from the perusal of the provision of 18 (1) (d) of ITO, 2001 that it prescribes a two-pronged test for bringing income under the head "income from business". The first is that any benefit or perquisite must have a fair market value, not necessarily whether it can be converted into money. The second is that a person may have received the value of that benefit or perquisite during or under a past, present, or prospective business relationship. The coexistence of both is necessary. The absence of one of them will not constitute income from a business.

ii) According to section 122(5) of the Income Tax Ordinance, 2001, two conditions have to be complied with before a Taxation Officer acquires jurisdiction to issue notice under section 122(9) in respect of an assessment beyond the period of five years from the end of the relevant financial year. These two conditions are: firstly, that the Taxation Officer must have obtained definite information from the audit or otherwise; and secondly, that on that basis he must also be satisfied that income chargeable to tax had escaped assessment or total income has been undervalued, or assessed at too low a rate, or has been the subject of excessive relief or refund or any amount under a head of income has been misclassified… above-stated two conditions must coexist for the Taxation Officer to assume jurisdiction. The absence of any of these will act as a bar to initiate proceedings to amend an original assessment order.

iii) Whenever jurisdiction is given by a statute and such jurisdiction is only given upon certain specified terms contained therein, it is a universal principle that those terms should be complied with, in order to create and raise the jurisdiction, and if they are not complied with, the jurisdiction does not arise.

iv) An action under section 122 cannot be justified merely on the ground that the opinion of the Taxation Officer regarding chargeability of income is different from the one under which it was originally assessed in the deemed order under section 120(1) of the Income Tax Ordinance, 2001. This is so because otherwise the taxpayer might become the victim of the freaks of a Taxation Officer's opinion from time to time. In other words, we may say that there is no jurisdiction on the part of the Taxation Officer to start upon a venture of amending the original assessment order in a haphazard fashion, on mere suspicion in the hope of unearthing an escapement of tax. So, to protect the taxpayer from the sword of Revenue hanging over its head, the law has provided a safeguard in the shape of section 122(5) for setting in motion the machinery of making amendments to the original assessment order

Conclusion: i) See under analysis no. 01.

ii) See under analysis no. 02.

iii) Whenever jurisdiction is given by a statute and such jurisdiction is only given upon certain specified terms contained therein, it is a universal principle that those terms should be complied with, in order to create and raise the jurisdiction, and if they are not complied with, the jurisdiction does not arise.

iv) An action under section 122 cannot be justified merely on the ground that the opinion of the Taxation Officer regarding chargeability of income is different from the one under which it was originally assessed in the deemed order under section 120(1) of the Income Tax Ordinance, 2001.

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11. **Supreme Court of Pakistan**
Chairman Evacuee Trust Property Board, Lahore & others v. Sufi Nazir Ahmed & others etc.
Civil Appeal Nos. 248, 249, 250, 251 & 252 OF 2014 & C.M.A. No. 5086 of 2022 In Civil Appeal No.250 of 2014
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._248_2014.pdf

Facts: The Peshawar High Court declared the amendments to clauses 10 and 11 of the Scheme for the Management and Disposal of Urban Evacuee Trust Properties, 1977 illegal relying upon Muzzafar case. The Supreme Court, therefore, called upon to examine whether these amendments could be said to be unreasonable in the light of Muzzfar Khan case.

Issue: Whether clauses 10 and 11 of the Scheme for the Management and Disposal of Urban Evacuee Trust Properties, 1977 are arbitrary, oppressive and unreasonable?

Analysis: Taking all the facts and circumstances in consideration, we have no doubt that the existing provisions of the Scheme relating to rent determination and fixation can no longer be considered unreasonable. The whole procedure of the Scheme is neither too mechanical, nor too rigid. It is a fundamental principle of justice that legitimate expectation ought not to be thwarted. The protection of legitimate expectation is at the heart of the constitutional principle of the rule of law, which requires fairness, reasonableness, regularity, predictability, a proper hearing, and certainty in the dealings of the government or its instrumentalities with the public. We find that legitimate expectation is present in the Scheme, and its existence brings procedural fairness in two ways: first, a policy or practice that dictates a particular procedure to be followed gives rise to the right of the tenant to demand that the procedure for assessment or reassessment of rent be followed; and secondly, if there is a legitimate expectation of a reasonable benefit, it may give rise to a right for a fair procedure before the benefit is withheld.2 It is clear from clauses 10 and 11 of the Scheme that the District Officer is mandated to fix the rent of the evacuee trust property, keeping in view the market rent and rent of other properties in the vicinity in similar circumstances. This means that his powers are not unbridled. He cannot act on his whims while assessing the rent. He is bound to observe the standards mentioned in the Scheme, so as to eliminate any improper motive and possibility of coercion. It is also evident that to bring transparency in the rent assessment procedure, the existing clause 10 ensures that not only the proposed assessment is open to inspection by the tenant but also provides them an opportunity for objections and hearings. An additional measure to prevent unfairness in the determination of rent is provided by empowering the Chairman of the Board or the Administrator concerned to suo moto examine the correctness or propriety of the determination of rent. At that, it has been mandated to periodically reassess the rent every six years and increase it at the rate of eight per cent per annum. After considering all things, we are poised to conclude that

all those shortcomings which were found illegal in the erstwhile procedure of assessment and reassessment of rent in Muzzafar Khan, has been remedied in the Scheme, and as such, we cannot accept the view expressed by the Peshawar High Court that clauses 10 and 11 of the Scheme are arbitrary, oppressive and unreasonable.

Conclusion: Clauses 10 and 11 of the Scheme for the Management and Disposal of Urban Evacuee Trust Properties, 1977 are not arbitrary, oppressive and unreasonable.

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12. **Supreme Court of Pakistan**
Anjuman Ghulaman Mustafa v. Darul Islamia Society & others
C.P.L.A. No. 6052 of 2021
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p.l.a.6052_2021.pdf

Facts: Through this C.P.L.A, the petitioner (judgment-debtor) seeks leave to appeal against the concurrent findings of the three courts below claiming the proceedings taken out by the respondent for executing the decree are patently out of time.

Issues: i) When the Court of last instance passes the decree, whether only that decree can be executed?
ii) Whether mere filing a petition for leave to appeal automatically extends the time for filing an execution application?

Analysis: i) In such a situation, the case of Abdul Qayyum urges us to remember that till such time, an appeal or revision from a decree is not filed, or such proceedings are pending but no stay order has been issued, such decree remains capable of execution but when the Court of last instance passes the decree only that decree can be executed, irrespective of the fact, that the decree of the lower Court is affirmed, reversed or modified.
ii) Unless the Supreme Court stays the proceedings of the decree or converts the petition into an appeal, the period of limitation cannot be deemed to have been clogged. Merely filing a petition for leave to appeal does not automatically extend the time for filing an execution application. However, if the leave is granted, the petition is converted into an appeal and allowed, in which case, the order of the Supreme Court will merge into the order of the lower forums and, thus, the period of limitation will start from the order of the Supreme Court.

Conclusions: i) Yes, when the Court of last instance passes the decree, only that decree can be executed.
ii) Merely filing a petition for leave to appeal does not automatically extend the time for filing an execution application.

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13. **Supreme Court of Pakistan**
Alay Javed Zaidi v. Habibullah & Others
Civil Petition No.1278-K of 2023
Mr. Justice Yahya Afridi, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1278_k_2023.pdf

Facts: Respondent No.1, being new landlord of rented commercial premises filed an application against the petitioner/tenant for fixation of fair rent under Section 8 of the Sindh Rented Premises Ordinance, 1979 which was allowed by Rent Controller and rent was enhanced. Being dissatisfied with the said judgment, both the petitioner and Respondent No.1 preferred their respective First Rent Appeals wherein the amount of fair rent was reduced by District Judge. The petitioner challenged the said judgment in appeal before the High Court through a Constitutional petition but the same was dismissed.

Issues: i) Whether institution of application for fair rent by a new owner of rented premises can be deemed to be a sufficient intimation to the petitioner regarding change of ownership as required under section 18 of the Sindh Rented Premises Ordinance, 1979?
ii) Whether for determination of fair rent of the premises under section 8 of the Sindh Rented Premises Ordinance, 1979, it is necessary that all four factors must co-exist in each and every case seeking fixation of fair rent?

Analysis: i) It is a settled proposition of law that even institution of application for eviction would be deemed to be substantial compliance of the provisions of Section 18 of the SRPO, 1979….In the same vein, the institution of application for fair rent by Respondent No.1 can be deemed to be a sufficient intimation to the petitioner regarding change of ownership in respect of subject tenement.
ii) It is a settled principle of law that it is not necessary that all these four factors must co-exist, rather one or two grounds are sufficient.

Conclusion: i) The institution of application for fair rent by a new owner of a rented premises can be deemed to be a sufficient intimation to the petitioner regarding change of ownership as required under section 18 of the Sindh Rented Premises Ordinance, 1979.
ii) For determination of fair rent of the premises under section 8 of the Sindh Rented Premises Ordinance, 1979, it is not necessary that all four factors must co-exist in each and every case seeking fixation of fair rent.

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14. **Supreme Court of Pakistan**
Ghulam Mustafa v. Mst. Mah Begum and others.
Civil Appeal No.43-Q of 2018
Mr. Justice Yahya Afridi, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.a._43_q_2018.pdf

Facts: The appellant filed a civil suit for declaration, recovery of possession by way of partition, and permanent injunction of property in the Court of Civil Judge. The said suit was dismissed. Aggrieved thereof, the appellant filed an appeal, which too met the same fate, leading to the Civil Revision before the High Court which was dismissed. Hence, the present petition before this Court, wherein leave to appeal has been granted.

Issues: i) Whether the consequential reliefs even within time, would be of legal avail when the main relief of declaration of ownership is barred by time?
ii) When co-owner of the joint property despite knowledge of an "actual denial of his right" has not challenged it within limitation would be denuded of the right to challenge the same?

Analysis: i) What is pertinent to note that in the suit filed by the appellant, the reliefs for recovery of possession and permanent injunction are consequential ones, dependent on the main relief of declaration of ownership of the disputed property, which in the present case was filed after 14 years, and thus, goes clearly beyond the six-year period of limitation provided under Article 120 of the First Schedule to the Limitation Act, 1908. By now, it is settled that when the main relief of declaration of ownership is barred by time, the consequential reliefs, even if within time, would be of no legal avail.
ii) A co-owner of the joint property who, despite possessing knowledge of an "actual denial of his right", refrains from challenging the said invasion of his right within the stipulated period of limitation, is denuded of the right to challenge the same. Similarly, in cases of joint property, where the third party interest is created and reflected in subsequent revenue records (Jamabandi), the same would not give rise to a renewed cause of action since it amounts to the actual denial of his right.

Conclusion: i) When main relief of declaration of ownership is barred by time, the consequential reliefs, even if within time, would be of no legal avail.
ii) When a co-owner of the joint property despite knowledge of an "actual denial of his right" has not challenged it within limitation would be denuded of the right to challenge the same.

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15. **Supreme Court of Pakistan**
M/s Pak Telecom Mobile Limited v. Muhammad Atif Bilal, etc.
Civil Petition No. 34 of 2022
Mr. Justice Yahya Afridi, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._34_2022.pdf

Facts: The petitioner has challenged the concurrent decisions of the Single Member and Full Member Bench of the Industrial Relations Commission as well as High Court, wherein the grievance petition of respondent no.1 was accepted. Hence, this petition.

Issues: i) Which is the competent forum for redressal of individual grievance of a worker,

who has been terminated, removed, retrenched, discharged, or dismissed from employment in a trans-provincial establishment, and which law is applicable**?**
ii) Whether in seeking a remedy under Section 33 of IRA of 2012, the term worker referred therein should be understood as defined in Section 2(xxxiii) of the IRA of 2012 or as outlined in or provided in the law (Standing Orders of 1968?
iii) Whether onus of proof would lie on the aggrieved worker filing the grievance petition under Section 33 of IRA of 2012, to prove that he fulfills the conditions precedent of a workman / worker provided under the applicable law or otherwise?
iv) What is the mode and manner of proof required of a worker to enforce his rights under the labour law?

Analysis: i) The appropriate forum of redressal for a workman who is terminated, removed, retrenched, discharged, or dismissed from service in a trans-provincial establishment is NIRC, as provided under Section 33 of the IRA of 2012. The said provision states that a 'worker' may bring his grievance in respect of any right guaranteed or secured to him by or under any law. The relevant applicable law for the purpose of right of reinstatement is Standing Orders of 1968, specifically Order 12(3). The competent forum for the redressal of personal grievance of a worker/workman of a tans-provincial establishment is NIRC, and the mode and manner of enforcing any right guaranteed or secured to him by or under any law has been provided under section 33 of the IRA of 2012.

ii) Where a workman is terminated, removed, retrenched, discharged, or dismissed from service in a trans-provincial establishment, he would be required to first prove that he fulfills the conditions precedent of a workman provided under IRA of 2012, to render his individual grievance maintainable under Section 33 of the IRA of 2012. Once, the grievance petition is held to be filed by the legally competent person, then in order to enforce his rights under Standing Order 12(3) of the Standing Orders of 1968, the aggrieved petitioner would have to prove that he is a workman envisaged under Standing Order 2(i) of Standing Orders of 1968.

iii) Regarding the onus of proof, it is trite law that the initial onus is on the person asserting a fact for seeking a relief. The initial onus was upon the aggrieved worker to prove that he was a workman under both statutes, Standing Orders of 1968 and IRA of 2012.

iv) To determine whether a person is a workman is a finding of fact, routed in evidence and the person who approaches the court on the basis of an averment that he is a workman carries the initial burden of proof to establish that he is a workman. To emphasize, when dealing with the question of burden of proof in establishing the status of the workman, the Supreme Court has consistently held that such burden lies on the person claiming to be a workman. It is the bounden duty of a person who approaches the Labour Court to demonstrate through evidence the nature of duties and functions, and to show that he is not working in any managerial or administrative capacity and that he is not an employer. In the absence of such evidence, a grievance petition would not be maintainable before

the Labour Court for lack of jurisdiction. This burden of proof is to be discharged by the claimant through documentary and oral evidence supporting his claim that the nature of his work is, in fact, manual or clerical. This requires the production of evidence, documentary or oral, which shows the nature of duties and the functions of the claimant pursuant to his claim that he is a workman. It has been clarified that even if there does not exist the power to hire or fire any person, the nature of the job as performed by the person must be evident from the holistic view of the record produced and that it has to be determined through overall record whether he was employed as a workman doing manual and clerical work and whether he was discharging his functions in a managerial and supervisory role. Accordingly, it is vital for the court to consider all the evidence and to ascertain the duties and functions of the person claiming to be a workman and to ensure that the workman has discharged his burden with the required evidence.

Conclusion: i) The appropriate forum of redressal for a workman who is terminated, removed, retrenched, discharged, or dismissed from service is NIRC, as provided under Section 33 of the IRA of 2012. The relevant applicable law is Standing Orders of 1968, specifically Order 12(3).

ii) The aggrieved workman is required to first prove that he fulfills the conditions precedent of a workman provided under IRA of 2012, to render his individual grievance maintainable under Section 33 of the IRA of 2012. Once, the grievance petition is held to be filed by the legally competent person, then in order to enforce his rights under Standing Order 12(3) of the Standing Orders of 1968, the aggrieved petitioner would have to prove that he is a workman envisaged under Standing Order 2(i) of Standing Orders of 1968.

iii) It is trite law that the initial onus is on the person asserting a fact for seeking a relief.

iv) To determine whether a person is a workman is a finding of fact, routed in evidence and the person who approaches the court on the basis of an averment that he is a workman carries the initial burden of proof to establish that he is a workman.

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16. **Supreme Court of Pakistan**
Waqas Shahzad v. Inspector General Police Punjab Lahore and others
Civil Petition No.152 of 2022
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._152_2022.pdf

Facts: Civil Petition for leave to appeal was filed against the dismissal of a police officer for incompetence and illegal activities. The petitioner was found guilty after inquiry and dismissed from service by the competent authority. The Punjab Service Tribunal upheld the dismissal.

Issues: (i) Whether revision can be filed as a vested right under Section 17 of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 or under Rule 12 of the Punjab Police (E&D) Rules, 1975?
(ii) Whether the competent authority can exercise revisional jurisdiction on its own motion without filing of application by any party?

Analysis: (i) It is clear beyond any shadow of doubt that under Section 17 of the Punjab Employees Efficiency, Discipline and Accountability Act, the powers of revision are on its own motion and not on application of any aggrieved person. Likewise, under Rule 12 of the Punjab Police (Efficiency & Discipline) Rules, 1975, the provision of revision is also exercisable on its motion of the authorities mentioned in the rules, and there is no opportunity provided under the rule to file revision as a vested right. Obviously, in case of any adverse findings or punishment or enhancement of punishment imposed in exercise of suo motu powers of revision within the time frame, the aggrieved person may approach the service tribunal for redress but the fact remains that revision cannot be filed as a matter of right and in case of rejection or dismissal of departmental appeal, the aggrieved employee should file the appeal before the Tribunal rather than filing revision petition or waiting for the decision of revision by the competent authority which is in fact detrimental and prejudicial to the own interest of such person who despite having in hand an adverse order passed against him in the departmental appeal, prefers to file revision petition which is not a vested right but such provision is provided to exercise suo motu powers and not based on the condition to apply by an aggrieved person.
(ii) The powers of revision are on its own motion and not on application of any aggrieved person.

Conclusion: (i) Revision cannot be filed as a vested right under Section 17 of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 or under Rule 12 of the Punjab Police (E&D) Rules, 1975.
(ii) The competent authority may exercise revisional jurisdiction on its own motion without filing of application by any party.

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17. **Lahore High Court**
Muhammad Aslam v. Judge Family Court, Ferozewala, etc.
Writ Petition No. 126306 of 2017
Mr. Justice Muhammad Ameer Bhatti, HCJ, Mr. Justice Masud Abid Naqvi, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2024LHC438.pdf

Facts: This judgment deals with ten petitions brought under Article 199 of the Constitution of the Islamic Republic of Pakistan, as these involve similar questions in controversy regarding appeal from a decree of maintenance granted for an amount less than Rs.5000/- per month to each of the plaintiffs.

Issues: i) Whether a decree for maintenance granted for an amount less than Rs.5000/- per month to each of the plaintiffs is appealable under section 14(2)(c) of the

Family Courts Act, 1964 by the judgment debtor if the aggregate amount of the decree is more than Rs.5000/- per month?

ii) What is the purpose or object of curtailing and restricting the right of appeal against a decree qua maintenance under section 14(2)(c) of the Family Court Act,1964?

iii) Whether the right to fair trial includes one right of appeal as per Article 10A of the Constitution?

iv) Whether the High Court has the jurisdiction to declare any provision of the Family Court Act to be repugnant to injunctions of Islam?

v) Whether 10% annual increase under section 17A(3) of the Act would render the decree appealable?

vi) Whether the remedy under Article 199 of the Constitution can be equated with the right of appeal?

Analysis: i) It is nowhere specified in clause 14(2)(c) that no appeal shall lie from a decree cumulatively for an amount of Rs.5000/- or less per month. Had the legislature intended so, it would have added words "in aggregate" or "in total" after the words five thousand occurring in clause (c) of section 14(2) ibid. It is trite law that reading in of words or meaning into a statutory provision is not permissible when its meaning is otherwise clear. As a matter of statutory interpretation, Courts generally abstain from providing omissions in a statute… When the amount of Rs.5000/- or less is not specified in section 14(2)(c) to be in aggregate, the decree passed for such an amount for each of the claimants remains not appealable. The decree may be passed in a suit allowing, rejecting or partly allowing claims of plaintiffs therein. The claim for maintenance in relation to each of the plaintiffs constitutes an independent cause of action that may be allowed, rejected or partly allowed in favour of any plaintiff. The plaintiffs can jointly file their claims or separately… In view of the foregoing, it is found that in terms of section 14(2)(c) of the Act, a decree for maintenance granted for an amount less than Rs.5000/- per month to each of the plaintiffs is not appealable.

ii) Maintenance is a basic condition for subsistence with dignity, as guaranteed under Articles 9 and 14 of the Constitution. The decree for maintenance, if any, is for the benefit of wife or a child. The purpose or object of curtailing and restricting the right of appeal against a decree qua maintenance under section 14(2)(c) of the Act is to ensure that the disputes qua maintenance are resolved expeditiously and benefits conferred through such decree reach the decree holder(s) without being frustrated. The legislature manifestly intends to save the wife and or child, who usually fall within the marginalized or disadvantage segment of the society, from having to incur cost, face delays and bear rigors of litigation in appeal for realization of a meager decretal amount specified therein.

iii) Article 10A of the Constitution guarantees right to fair trial and due process for the determination of civil rights and obligations of a person, however, there is nothing in the language of the said article that guarantees at least one right of appeal against all such determinations.

iv) In view of the provisions of Article 203D, it is essentially authority of the Federal Shariat Court, if any, to declare any law repugnant to injunctions of Islam and jurisdiction of High Court in that regard is indeed expressly barred under Article 203G of the Constitution. Resultantly, we are unable to declare the provision of section 14(2)(c) of the Act to be repugnant to injunctions of Islam.
v) As regards plea qua annual increase under section 17A(3) of the Act, suffice it to say that the said provision comes into operation where the Family Court has failed to prescribe the annual increase in the maintenance while passing the judgment and decree. Annual increase under the said provision does not form part of adjudication resulting in the decree, however, the same is automatically enforceable by operation of law, therefore, it cannot be taken into consideration for the purpose of section 14(2)(c) of the Act.
vi) The remedy under Article 199 of the Constitution cannot be equated with the right of appeal provided under any law inasmuch as the former is confined to interference in the cases of violation of law whereas the latter includes arriving at any point of view after reappraisal of evidence.

Conclusion: i) In terms of section 14(2)(c) of the Act, a decree for maintenance granted for an amount less than Rs.5000/- per month to each of the plaintiffs is not appealable.
ii) The purpose or object of curtailing and restricting the right of appeal against a decree qua maintenance under section 14(2)(c) of the Act is to ensure that the disputes qua maintenance are resolved expeditiously and benefits conferred through such decree reach the decree holder(s) without being frustrated.
iii) There is nothing in the language of the Article 10A of the Constitution that guarantees at least one right of appeal against all such determinations.
iv) Under article 203G of the Constitution jurisdiction of High Court to declare any provision of the Family Court Act to be repugnant to injunctions of Islam is expressly barred.
v) Annual increase does not form part of adjudication resulting in the decree, however, the same is automatically enforceable by operation of law, therefore, it cannot be taken into consideration for the purpose of appeal.
vi) See above in analysis clause.

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18. **Lahore High Court**
Ulfat Rasool v. The State
Murder Reference No. 279 of 2019.
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC453.pdf

Facts: Being aggrieved, the petitioner assailed the decision of the trial court through Criminal Appeal wherein he was convicted and sentenced in a murder case.

Issues: i) What is the settled criminal law in cases of circumstantial evidence?
ii) What is the law for proving audio tape or video before the court?

iii) What is the settled law regarding benefit of doubt to the accused?

Analysis: i) It is the settled law that in case of circumstantial evidence, every circumstance should be linked with each other and it should form such a continuous chain that its one end touches the dead body and other to the neck of the accused. But if any link in the chain is missing then its benefit must go to the accused.
ii) No audio tape or video could be relied upon by a court until the same was proved to be genuine and not tampered with or doctored. A person recording the conversation or event had to be produced in evidence and he must produce the audio tape or video himself and safe custody of the audio tape or video, after its preparation till production before the Court, must also be proved. With the advancement of science and technology, it is now possible to get a forensic examination, audit or test conducted through an appropriate laboratory so as to get it ascertained as to whether an audio tape or a video is genuine or not and such examination, audit or test can also reasonably establish if such audio tape or video has been edited, doctored or tampered with or not.
iii) It is well settled that if there is a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused .

Conclusion: i) It is the settled law that in case of circumstantial evidence, every circumstance should be linked with each other and it should form such a continuous chain that its one end touches the dead body and other to the neck of the accused.
ii) No audio tape or video could be relied upon by a court until the same was proved to be genuine and not tampered with or doctored.
iii) If there is a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused.

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19. **Lahore High Court**
Abdul Rahman and others v. Muhammad Farooq and others.
R.F.A.No. 14953 of 2022
Mr. Justice Shahid Bilal Hassan, Mr. Justice Masud Abid Naqvi
https://sys.lhc.gov.pk/appjudgments/2024LHC660.pdf

Facts: Through this Regular First Appeal the appellants have called in question judgment and decree passed against them while dismissal of their suit by the trial court.

Issues: i) What is the definition of the term "Issue"?
ii) Whether the stage of framing of issues is very important in trial of civil suit?
iii) How much are the kinds of Issues?
iv) What is the main object of framing Issues?
v) What are the duties of Court while framing the Issues?
vi) Which matters should be considered by the court before framing the Issues?
vii) Which materials can be considered by the court while framing of Issues?
vi) Whether the court can amend or strike down any issues at any time before

passing of decree?

vii) Whether the appellate court can frame the issue and refer it for trial to the lower court.

Analysis: i) The term "issue" in a civil case means a disputed question relating to rival contentions in a suit. It is the crucial point of disagreement, argument or decision. It is the point on which a case itself is decided in favour of one side or the other, by the court…According to the dictionary meanings, "issue" means a point in question; an important subject of debate, disagreement, discussion, argument or litigation. Issues mean a single material point of fact or law in litigation that is affirmed by one party and denied by the other party to the suit and that subject of the final determination of the proceedings.

ii) Framing of issues is probably the most important part of the [trial] of a civil suit. For a correct and accurate decision in the shortest possible time in a case, it is necessary to frame the correct and accurate issues. Inaccurate and incorrect issues may kill the valuable time of the court...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 arerequired to prove issues and not pleadings as provided by Order XVIII, Rule 2, CPC…

iii) As per the Order XIV Rule 1(4) of the Code of Civil Procedure, 1908, issues are of two kinds: (1) Issues of fact, (2) Issues of Law. Issues, however, may be mixed issues of fact and law. Rule 2(1) of Order XIV provides that where issues: both of law and fact arise in the same suit, notwithstanding that a case may be disposed of on a preliminary issue, the court should pronounce judgment on all issues, but if the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first, if that issue relates to: The jurisdiction of the court; or A bar to the suit created by any law for the time being in force. For that purpose, the court may, if it thinks fit, postpone the settlement of the other issues until the issues of law have been decided.

iv) The main object of framing of issues is to ascertain the real dispute between the parties by narrowing down the area of conflict and determine where the parties differ. An obligation is cast on the court to read the plaint and the written statement and then determine with the assistance of the learned counsel for the parties, material propositions of fact or of law on which the parties are at variance. The issue shall be formed on which the decision of the case shall depend. The object of an “issue” is to tie down the evidence and arguments and decision to a particular question so that there may be no doubt on what the dispute is. The judgment then proceeding issue-wise would be able to tell precisely how the dispute was decided.

v) It is duty of Court to frame issues from material propositions. To frame issues, court is to find out questions of fact, questions of law and mixed questions of fact

and law from pleading of parties and other materials, which are produced with pleading and parties are to produce their evidence to prove or disprove framed issues. The relevant provisions in this regard are; a) Order 14 Rule 1 to 6,b) Order 18 Rule 2,c)Order 20 Rule 5,d)Order 41 Rule 31,e) Order 15 Rule 1 of CPC 1908… 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.(…)

vi) Matters to be considered before framing of issues are:-

i. Reading of the plaint and written statement, the court shall read the plaint and written statement before framing an issue to see what the parties allege in it.
ii. Ascertainment whether allegations in Pleadings are admitted or denied, Order 10 Rule 1 permits the court to examine the parties for the purpose of clarifying the pleadings, and the court can record admissions and denials of parties in respect of an allegation of fact as are made in the plaint and written statement.
iii. Admission by any Party. If any party admitted any fact or document, than no issues are to be framed with regard to those matters and the court will pronounce judgment respecting matters which are admitted.
iv. Examination of material proposition. The court may ascertain, upon what material proposition of law or fact the parties are at variance.
v. Examination of witnesses. The court may examine the witnesses for purpose of framing of issues.
vi. Consider the evidence. The court may also in the framing of issues take into consideration the evidence led in the suit. Where a material point is not raised in the pleadings, comes to the notice of the court during course of evidence the court can frame an issue regarding it and try it.
vii. Examination of any witnesses or documents under Order 14 Rule 4. Under this rule any person may be examined and any document summoned, for purposes of correctly framing issues by court, not produced before the court.

vii) The court may frame the issues from all or any of the following materials.

i. Allegations made on oath. Issues can be framed on the allegations made on oath by the parties or by any persons present on their behalf or made by the pleader of such parties.
ii. Allegations made in Pleadings. Issue can be framed on

the basis of allegations made in the pleadings.

iii. Allegations made in interrogatories. Where the plaint or written statement does not sufficiently explain the nature of the party's case, interrogatories may be administered to the party, and allegations made in answer to interrogatories, delivered in the suit, may be the basis of framing of issues.

iv. Contents of documents. The court may frame the issue on the contents of documents produced by either party.

v. Oral examination of Parties. Issues can be framed on the oral examination of the parties.

vi. Oral objection. Issues may be framed on the basis of oral objection.

viii) At any time before passing of decree, court can amend framed issues on those terms, which it thinks fit. However, such amendment of framed issues should be necessary for determination of matters in controversy between parties. Moreover, at any time before passing of decree, court can strike out framed issues especially when it appears to court that such issues have been wrongly framed or introduced. Regarding amendment of framed issues, court possesses discretionary power. Court can exercise this power when no injustice results from amendment of framed issue on that point, which is not present in pleading(s). However, it cannot be exercised when it alters nature of suit, permits making of new case or alters stand of parties through rising of inconsistent pleas. Regarding amendment of framed issues, court also has mandatory power. In fact, court is bound to amend framed issues especially when such amendment is necessary for determination of matters in controversy, when framed issues of do not bring out point in controversy or when framed issues do not cover entire controversy...

ix) When the lower court omitted to frame an issue before trying a matter in controversy, the appellate court can frame the issue and refer it for trial to the lower court. There is no need to remand the entire case. Then the lower court should try such issues and return the evidence and its decision to the appellate court.

Conclusion: i) See above in analysis portion.

ii) Yes, the stage of framing of issues is very important in trial of civil suit.

iii) As per the Order XIV Rule 1(4) of the Code of Civil Procedure, 1908, issues are of two kinds.

iv) The main object of framing of issues is to ascertain the real dispute between the parties by narrowing down the area of conflict and determine where the parties differ.

v) See above in analysis portion.

vi) See above in analysis portion.

vii) See above in analysis portion.

viii) Yes, the court can amend or strike down any issues at any time before passing of decree but subject to certain legal exceptions.

ix) Yes, the appellate court can frame the issue and refer it for trial to the lower court.

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20. **Lahore High Court**
Muhammad Adil Nawaz Bhatti v. Chairman Union Council and others
Writ Petition No.62590 of 2023
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC538.pdf

Facts: After contracting marriage, the petitioner and respondent No.3 went to reside abroad. Afterwards, the petitioner sent three separate notices of divorce to the Chairman Union Council but he was advised to approach the concerned forum abroad. Then, the petitioner sent a request to the Consulate General Pakistan in Germany and also moved a detailed application with relevant documents to the respondent No.1 requesting him to issue divorce effectiveness certificate, which request was declined. Later, the petitioner approached the Consulate General of Pakistan regarding issuance of divorce effectiveness certificate but he was advised to approach Arbitration Council in Pakistan on score that Pakistan Mission abroad could no more act as Arbitration Councils. Lastly, the petitioner moved a detailed application to the ADLG City Lahore with the request for issuance of divorce effectiveness certificate but the same was again refused; hence, the instant constitutional petition.

Issue: Which authority is competent to issue divorce effectiveness certificate, in case when the wife is residing abroad at the time of transmitting notices of *Talaq* by the husband?

Analysis: 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 state that the Union Council and/or the Chairman, which would have jurisdiction in the matter of issuance of divorce effectiveness certificate would be the Union Council and/or the Chairman within whose territorial jurisdiction the wife was residing at the time of pronouncement of divorce. If the wife was residing abroad at the time of alleged notices of *Talaq,* then the jurisdiction for taking up the matter of divorce is with the designated officer in the Pakistan Consulate/Mission in that country where she was residing, as per S.R.O.No.1086(K)61 dated 09.11.1961.

Conclusion: Under the Muslim Family Laws Ordinance, 1961 and S.R.O.No.1086(K)61 dated 09.11.1961, the designated officers of Pakistan Mission abroad are authorized to discharge the functions of Chairman Union Council, if the wife was residing abroad at the time of transmitting notices of *Talaq* by the husband.

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21. **Lahore High Court**
Chairman, National Highway Authority through its G.M. & another v. Abdul Hameed and another
F.A.O. No.5549 of 2023
Mr. Justice Shahid Bilal Hassan

https://sys.lhc.gov.pk/appjudgments/2024LHC546.pdf

Facts: The respondent No.1challenged an award through reference in which trial Court issued notices to all the appellants initially. The respondent No.1 did not deposit the process fee and talbana. However, ignoring that fact, the trial Court resorted to issuance of notice through publication in newspaper and adjourned the case and on the said date the appellants were proceeded against ex parte. Eventually, the reference was decreed ex parte after recording evidence. The appellants on gaining knowledge filed an application for setting aside ex parte proceedings. The trial Court dismissed the said application. The appellants earlier filed a writ petition against the said order but the office raised objection which was sustained. Hence, the instant appeal.

Issues: i) Whether substitute service can be ordered without verifying all efforts to effect the service in the ordinary manner?
ii) Whether delay in filing the application under Order IX, Rule 13, Code of Civil Procedure, 1908 can be condoned on the ground that basic order for initiating ex-parte proceedings has no backing of law?

Analysis: i) When the position remained as such, the act of the Court for resorting to substituted service cannot be said more than an illegality and nullity in the eye of law. It is a settled principle of law that unless all efforts to effect the service in the ordinary manner are verified to have been failed, substitute service cannot be resorted to. There is a series of authorities on this proposition of law. However, the reference can be made to Mrs. Nargis Latif v. Mrs. Feroz Afaq Ahmed Khan (2001 SCMR 99) and Haji Akbar and others v. Gul Baran and 7 others (1996 SCMR 1703). I have no, slightest doubt in holding that the orders for substitute service were passed in a mechanical fashion and without proper application of mind. Such orders were passed without ascertaining the reasons for non-service and without verifying the factum as to whether all other modes of service were exhausted and were rendered futile. In such circumstances the substituted service being in violation of the law and the rule laid down by the Honourable Supreme Court as referred above could not be deemed to be valid service.
ii) Therefore, when the basic order for initiating ex parte proceedings against the present appellants has no backing of law and has been passed without adopting due process of law, the superstructure and edifice built thereon i.e. subsequent ex parte decree cannot stand because if the same is allowed to hold field, it would definitely infringe the rights of the appellants' inalienable right of defending the case and would amount to condemn the appellants without affording an opportunity of hearing. The above fact is sufficient to condone the delay in filing the application under Order IX, Rule 13, Code of Civil Procedure, 1908.

Conclusion: i) Substitute service cannot be ordered without verifying all efforts to effect the service in the ordinary manner.
ii) Delay in filing the application under Order IX, Rule 13, Code of Civil

Procedure, 1908 can be condoned on the ground that basic order for initiating ex-parte proceedings has no backing of law and has been passed without adopting due process of law.

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22. **Lahore High Court**
Muhammad Akram v. Province of Punjab through Collector and others.
Civil Revision No.5690 of 2024
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC551.pdf

Facts: Through this civil revision, Petitioner assailed the concurrent findings on record of Civil Court as well Appellate Court whereby his suit for specific performance of agreement to sell was dismissed.

Issues: i) Whether question of law of limitation is a mere technicality or a hyper technicality?
ii) Whether the concurrent findings on record, where no legal infirmity or illegality, can be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908?

Analysis: i) It is a settled law that limitation is not a mere technicality or a hyper technicality rather once limitation expires; a right accrues in favour of the other side by operation of law which cannot lightly be taken away (…) Moreover, it is a settled principle of law that question of law even if not taken or raised by the opposite party, could be considered by the Courts even at appellate and revisional stage.
ii) … however, in the instant case, the learned Courts below have minutely dilated upon the evidence of the parties and have also rightly non-suited the petitioner on merits as well. There appears no legal infirmity or illegality in the impugned judgments and decrees warranting interference by this Court in exercise of revisional jurisdiction under section 115, Code of Civil Procedure, 1908. The findings recorded by the learned Courts below are upheld and maintained. Resultantly, it is held that the learned Courts below have committed no illegality, irregularity and wrong exercise of jurisdiction, rather after evaluating evidence on record have reached to a just conclusion. The impugned judgments and decrees do not suffer from any infirmity, rather law on the subject has rightly been construed and appreciated. As such, the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908.

Conclusion: i) Question of law of limitation is not a mere technicality or a hyper technicality.
ii) The concurrent findings on record, where no legal infirmity or illegality, cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908.

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23. **Lahore High Court**
Sana Ullah v. The State etc.
Crl. Appeal No.78000-J of 2019
Muhammad Arshad v. Sana Ullah, etc.
Crl. Revision No.69601 of 2019
Justice Miss Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2024LHC631.pdf

Facts: Criminal Appeal was filed by convict/appellant against his conviction and sentence passed under sections 302/427/34 of PPC. The complainant, dissatisfied with the impugned judgment, preferred a Criminal Revision for awarding a death sentence to appellant.

Issues: i) Whether the Medical Evidence is sufficient to connect the accused with the commission of offence?
ii) Whether the joint Identification Parade of many accused in one go is proper and safe?
iii) Whether a single circumstance is sufficient to extend the benefit of doubt to an accused as of, right?

Analysis: i) By now, it is well-settled law that medical evidence can only indicate that the deceased had lost his life due to specific injuries, but it does not lead to the culprits. (…) As far as medical evidence is concerned, it only supports the prosecution case to the extent that the deceased lost his life due to fire-arm injury but it does not lead to the culprits
ii) Apart from that the test identification parade held in this case was a joint parade wherein two accused persons had been made to stand with dummies in two lines and their identification had taken place simultaneously in one go. This Court has also clarified in the cases of Lal Pasand v. The State (PLD 1981 SC 142), Ziaullah alias Jaji v. The State (2008 SCMR 1210), Bacha Zab v. The State (2010 SCMR 1189), Sahfqat Mahmud and others v. The State (2011 SCMR 537) and Gulfam and another v. The State (2017 SCMR 1189) that the identification of many accused in one go is not proper besides being unsafe.
iii) Per the dictates of the law, the benefit of every doubt will be extended in favor of the accused/appellant. The conviction and sentence the trial court recorded cannot be sustained. Reliance has been placed on the case reported as Muhammad Akram v. The State (2009 SCMR 230), wherein the Hon'ble Supreme Court of Pakistan had held that even a single circumstance creating reasonable doubts in a prudent mind about the guilt of the accused makes him entitled to its benefit, not as a matter of grace and concession, but as a matter of right.

Conclusions: i) Medical evidence can only indicate that the deceased had lost his life due to specific injuries but it does not lead to the culprits.
ii) Joint Identification Parade test of many accused in one go is not proper besides being unsafe.
iii) Even a single circumstance creating reasonable doubts in a prudent mind

about the guilt of the accused makes him entitled to its benefit, not as a matter of grace and concession but as a matter of right.

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24. **Lahore High Court**
Muhammad Bilal v. The State etc.
Crl. Appeal No.56380 of 2021
Muhammad Saleem v. Muhammad Bilal, etc.
Crl. Revision No.42144 of 2021
Justice Miss Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2024LHC686.pdf

Facts: Through Criminal Appeal, the appellant has assailed his conviction and sentenced to rigorous imprisonment for life as Tazeer with the direction to pay Rs.5,00,000/- as compensation to the legal heirs of the deceased awarded by the Additional Sessions Judge. The complainant, dissatisfied with the judgment preferred a Criminal Revision for awarding death sentence to respondent.

Issues: i) Whether an adverse inference can be drawn under Article 129 (g) of Qanun-e-Shahadat Order, 1984 upon non-production of a material witness?
ii) Whether site plan can be used to contradict or disbelieve eyewitnesses?
iii) Whether a report of an expert is per-se admissible without examination of the expert?
iv) Is it incumbent upon the prosecution to produce members of the PFSA team who collected the crime empties and prepared separate parcels to prove the chain of safe custody?

Analysis: i) I have noted that the said Constable was not produced as a witness by the prosecution. Thus, it was established from the recovery memo of possession of nine (9) photographs (Ex. PN) that Constable produced the nine (9) photographs (Ex. PN) on 10.08.2018 before S.I. the investigating officer, therefore, an adverse inference is to be drawn within the meaning of Article 129 (g) of Qanun-e-Shahadat Order, 1984 that had Constable, been appeared as witness then his deposition would have been unfavorable to the prosecution.
ii) Although the site plan is not a substantive piece of evidence in terms of Article 22 of the Qanune-e-Shahdat Order 1984 as held in the case of Mst. Shamim Akhtar v. Fiaz Akhter and two others (PLD 1992 SC 211), but it reflects the view of the crime scene, and the same can be used to contradict or disbelieve eyewitnesses.
iii) Besides, a bare reading of Section 510 Cr.P.C., a report of an expert is per se admissible without examination of the expert (...) A bare reading of this Section makes it abundantly clear that the reports of the Chemical Examiner or Assistant Chemical Examiner to the Government [or of the Chief Chemist of Pakistan Security Printing Corporation, Limited] or any Serologist, fingerprint expert, or fire-arm expert or the Chemist or the Pharmacist or the Forensic Scientist or Handwriting expert are admissible per se without they being formally proved by the person who has made the same.

iv) It is in prosecution evidence that a team consisting of the members of the Punjab Forensic Science Agency inspected the place of occurrence, collected evidence, prepared three parcels separately, and handed them over to S.I the investigating officer. The members of the PFSA team are not officers covered by Section 510 of the Code of Criminal Procedure, and thus, the positive report of Punjab Forensic Science Agency (Ex. PW) is not conclusive and reliable in the absence of the officers above being examined in Court, who collected and prepared the parcels from the spot and prepared separate parcels to prove the fact that they collected evidence from the place of the occurrence and after that, they prepared parcels which were handed over to S.I the investigating officer. The report in question is of no help to the prosecution as there is nothing on record to prove that the three parcels alleged to have been made by the members of the PFSA team on the spot. Thus, there can be no dispute that it was incumbent upon the prosecution to produce members of the PFSA team who collected the crime empties and prepared separate parcels to prove the chain of safe custody. Without such proof, the PFSA report cannot corroborate the prosecution's case.

Conclusion: i) An adverse inference can be drawn under Article 129 (g) of Qanun-e-Shahadat Order, 1984 upon non-production of a material witness.
ii) Site plan can be used to contradict or disbelieve eyewitnesses.
iii) A report of an expert is per-se admissible without examination of the expert.
iv) It is incumbent upon the prosecution to produce members of the PFSA team who collected the crime empties and prepared separate parcels to prove the chain of safe custody.

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25. **Lahore High Court**
Syed Sibt Hassan v. Saba Batool etc.
Writ Petition No.38567/2022
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2024LHC572.pdf

Facts: The respondents No.1 & 2 in this writ petition, who are also petitioners in connected Petition, filed a family suit for recovery of maintenance allowance, dowry articles, delivery expenses and dower against the petitioner and suit was decreed by the Trial Court, however, the claim of respondent No.1 for dower was dismissed. The respondents filed constitutional petition, wherein the matter was remanded back to the appellate court to decide the question of dower while recording the finding about validity and effect of the Agreement. In post-remand proceedings, the appellate court upholds the validity of the agreement. The petitioner being aggrieved of the impugned judgment & decree has filed this constitutional petition.

Issues: i) Whether burden to prove the agreement regarding enhancement of dower after marriage lies on the beneficiary?
ii) Whether enhancement of dower amount after marriage is permissible and executable under law?

Analysis: i) Regarding validity of the Agreement, no doubt under Section 17 of the Family Courts Act, 1964 (Act), the Qanun-e-Shahadat Order, 1984 (QSO) and the Code of Civil Procedure, 1908 (CPC) are not applicable in family matters, however, as the respondents were beneficiary of the Agreement, initially the burden of proof was on them to prove the execution of the Agreement.

ii) There is no cavil with the proposition settled by the Supreme Court in case of 'Muhammad Bashir Ali Siddiqui' supra, followed by this Court in case of 'Muhammad Asif' supra (relied upon by petitioner's counsel) that a stringent condition cannot be imposed to keep the parties in marriage bond. However, perusal of the Agreement shows that the petitioner agreed to pay enhanced amount as dower in case of divorce. This stipulation in the Agreement is not stringent condition imposed to keep the parties in marriage bond rather it is enhancement of the dower amount by the husband, which is not only permissible but also executable as discussed below. Under Para-287 of the "Principles of Mahomedan Law" by DF Mulla, the dower may be fixed either before or at the time of marriage or after marriage and can also be increased after marriage…

Conclusion: i) Burden to prove the agreement regarding enhancement of dower after marriage lies on the beneficiary.

ii) Enhancement of dower amount after marriage is not only permissible but also executable under law.

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26. **Lahore High Court**
The State v. Umer Draz and etc.
Murder Reference No.223 of 2019
Umer Draz etc. v. The State
Criminal Appeal No. 44377 of 2019
Rahtas Khan v. Tariq Aziz
P.S.L.A.No.55094 of 2019
Rahtas Khan v. Abdul Ghafar
Criminal Revision No. No.55096 of 2019
Mr. Justice Sadaqat Ali Khan, Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC714.pdf

Facts: Appellants had filed Criminal Appeal against their convictions u/s 302/324/148/149 PPC, complainant filed Crl.P.S.L.A against acquittal of respondents/co-accused and Crl.Rev. for enhancement of compensation whereas trial Court had sent Murder Reference for confirmation of death sentence.

Issues: (i) Duty of a Court in dealing with cases of two versions?

(ii) Evidentiary value of recovery effected on the pointation of accused in absence of positive report of PFSA?

(iii) Relevance of nature of offence at the time of appraising or re-appraising evidence to determine the guilt of accused persons?

(iv) Effect of failure on part of the prosecution to prove its case?

Analysis: (i) The duty of a Court in such like cases is to review entire evidence and circumstances at the close, before arriving at a conclusion regarding the truth or falsity of the defence plea. All factors favouring belief in accusation must be placed in juxta position to the corresponding factors favouring the plea in defence. However, it is not ignored that basic duty of the prosecution to prove its own case beyond shadow of doubt against an accused. If prosecution is failed to prove its case beyond shadow of doubt against an accused then there is no need to consider prosecution case and defence plea in juxta position with each other rather an accused is to be acquitted even if he had taken a plea and had thereby admitted killing the deceased.

(ii) Recovery on pointing out of (appellants), respectively in absence of positive report of PFSA regarding matching of crime empties with weapons of offence is inconsequential.

(iii) Gruesome, heinous and brutal nature of the offence may be relevant at the stage of awarding suitable punishment for conviction but it is totally irrelevant at the stage of appraising or reappraising the evidence available on record to determine guilt of the accused persons as possibility of an innocent person having been wrongly involved in cases of such nature cannot be ruled out. An accused person is presumed to be innocent till the time he is proven guilty beyond reasonable doubt, and this presumption of his innocence continues until the prosecution succeeds in proving the charge against an accused beyond reasonable doubt on the basis of legally admissible, confidence inspiring, trustworthy and reliable evidence which is missing in the present case.

(iv) Law is settled by now that if the prosecution fails to prove its case against an accused person then the accused person is to be acquitted even if he had taken a plea and had thereby admitted killing the deceased.

Conclusion: (i) The duty of a Court in such like cases is to review entire evidence and circumstances at the close, before arriving at a conclusion regarding the truth or falsity of the defence plea.

(ii) See analysis part.

(iii) Nature of the offence may be relevant at the stage of awarding suitable punishment for conviction but it is totally irrelevant at the stage of appraising or reappraising the evidence available on record to determine guilt of the accused persons.

(iv) See analysis part.

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27. **Lahore High Court**
Commissioner Inland Revenue v. Muhammad Osman Gul
ICA No.35908 of 2023
Mr. Justice Shahid Karim, Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC463.pdf

Facts: This judgment decided a cluster of Intra Court Appeals brought by the Income Tax Department/Federal Board of Revenue (FBR) and brought by the private

parties to challenge the judgment passed by a learned Single Judge of this Court and a large number of connected constitutional petitions which were decided by the same judgment.

Issues: i) What is the scope of judicial review in case of imposition of tax by the legislature?
ii) What is the definition of word "income" in Income Tax Ordinance, 2001?
iii) Whether object of Section 7E of Income Tax Ordinance, 2001 can be defeated on the ground that the legislature does not have power to tax deemed income?
iv) What is the legislative intent of Section 7E of Income Tax Ordinance, 2001?
v) What is meant by taxable income?
vi) What is the concept of inserting Section 7E in the Finance Act, 2022?
vii) Whether Entry 47 applies to the provisions of Section 7E and is a tax on income duly covered by the term as defined in section 2(29) of the 2001 Ordinance?
viii) Whether the legislature can impose a tax on certain set of persons and to grant exemption in respect of the other set of persons?
ix) Whether a person may be subjected to more than one tax on his income?
x) What is the intention of legislature by not defining the term 'income' in the Constitution?
xi) What does the sentence "any amount treated as income under any provision of this Ordinance" connotes under The 2001 Ordinance?
xii) Whether the courts can rely upon Parliamentary debates?
xiii) Whether the courts can use the device of reading down in order to re-write a statutory provision?
xiv) Whether taxpayers were being subjected to double taxation under section 7E and section 37 of the Ordinance as these were taxes of same genus?
xv) Whether classification in section 7E in respect of capital assets allotted to certain persons is discriminatory?

Analysis: i) From the portion of the 'Treatise' set out above, it is clear that the power of taxation is unlimited in its reach as to subject and by its very nature it acknowledges no limits and may be carried to any extent which the government may find expedient. The judiciary can afford no redress against taxation so long as the legislature in imposing it keeps within the limits of legislative authority and violate no express provisions of the constitution. The 'Treatise' by Cooley relied upon hereinabove is a seminal study of taxation and is considered as an authority on the subject of taxes and their nature and kinds.
ii) This is true basis on which we have proceeded to consider the extent and meaning of the word 'income' as used in the Constitution and the law and have arrived at the conclusion by recognizing that the word 'income' has taken colour and content according to the circumstances and the times in which it has been used in the 2001 Ordinance. (…) The simple proposition in our opinion is that if the term 'income' has not been defined in a certain manner by the Constitution, it

must be given its widest and broadest meaning and the amplitude of the term cannot be confined to mean a certain thing and not the other. It would then be left to the legislature to define the term 'income' which has been done by providing a definition in the 2001 Ordinance as set out above.

iii) Applying the purposive approach to the interpretation of Section 7E, we have no doubt that the purpose that the provision was enacted to accomplish, was to treat as income chargeable to tax, an amount equal to five percent of the fair market value of capital assets, which the taxpayers use for increase in wealth on account of rise in value of the immovable property. The purpose is also clear from the speech of the Finance Minister and the accomplishment of the object of section 7E cannot be frustrated by holding that the legislature does not have power to tax deemed income.

iv) The tax has been levied on notional income but not a notional asset (from which it is deemed to arise). The legislature has intended to tax an asset apparently lying dormant and not generating an income in cash but indeed capable of increment in value. It is that value addition that section 7E seeks to tax. Notionally the augmentation in value does become part of taxpayer's income.

v) Thus, taxable income as envisaged in the Ordinance would mean the total income of a person for the year reduced by the total of any deductible allowances. Section 10 of the Ordinance further defines the term 'total income' to mean a persons' income under all heads of income for the year. The heads of income have been provided in section 11 and include salary, income from property, income from business, capital gains and income from other sources. These heads of income clearly relate to real and tangible income and so the legislature in including the words "any amount treated as income under any provision of this Ordinance' was cognizant of what taxable income was and so proceeded to extend the meaning of the term 'income' to include deemed and notional income imputable to a taxpayer.

vi) The definition of 'income' given in the 2001 Ordinance does not restrict the meaning of the term 'income' but uses the word 'includes' which would leave it open for a specific sum to be included in the term 'income' as the case may require. By the Finance Act, 2003 the words "any amount treated as income under any provision of this Ordinance" were added to the definition. With the addition of these words in the term 'income', we cannot help concluding that the legislature would deem any amount to be income if it has been treated as such under any provision of the 2001 Ordinance. It does not matter whether the amount so treated is tangible income in the form of cash or money or rather notional or deemed income. If the legislature treats a certain amount as income then it must be held to be income for the purposes of chargeability of tax. This is precisely what Section 7E has done by treating an income to be the notional income of a taxpayer at a certain time. We may clarify however that the notional income is not such that it is incapable of being realised at a future time and in fact the premise of taxation under Section 7E is that in the foreseeable future that notional income would be converted into real tangible income in the hands of the taxpayer. Section

7E presumes that a resident person has certain capital assets situated in Pakistan which though do not generate any income chargeable to tax but may be so charged to a notional income which the resident person shall be treated to have derived. The measure of tax is an amount equal to 5% of the fair market value of capital assets situated in Pakistan.

vii) Thus, we have no doubt in our mind that Entry 47 applies to the provisions of Section 7E and is a tax on income duly covered by the term as defined in section 2(29) of the 2001 Ordinance. The legislature has treated deemed/ notional income of a taxpayer holding a capital asset situated in Pakistan as a category of income and so the taxpayers cannot turn around and say that he cannot be taxed on such income being ultra vires. If this were the case, the petitioners before the learned Single Judge ought to have challenged the words inserted by Finance Act, 2003 by which the notion of deemed income was introduced in the 2001 Ordinance.

viii) Entry 47 simply says that the legislature has the power to impose taxes on income other than agricultural income. The learned Addl. Attorney General is right when he contends that the words used would mean a wide array of different taxes which may be imposed on income and this is clearly discernible from reading of the Ordinance which indeed imposes taxes of different nature on the income of a person or different persons.

ix) It may be that the legislature chooses to impose a tax on certain set of persons and to grant exemption in respect of the other set of persons. By this mere categorization the tax will not be unconstitutional. Moreover, a person may be subjected to more than one taxes on his income to be caught by double taxation. In case the law permits clearly and without equivocation, such a tax would not be unlawful by the mere fact that it taxes the same income twice over.

x) As stated earlier, the term 'income' has not been defined in the Constitution. The intention is clear and we do not harbour any doubt in this regard viz. that the framers of the Constitution intended the term to be elastic in the hands of the legislature to define it in whatever manner it deems appropriate in a given case. This is the very essence of Entry 47 and to attribute an intention to restrict or circumvent the powers of the legislature to define the term 'income' would be an unconstitutional argument.

xi) For the purposes of these cases, the important words in the definition are "any amount treated as income under any provision of this Ordinance". These words do not convey the meaning as proffered by the learned Single Judge to mean that the word "amount" used in this sentence would relate to a tangible and realisable amount and not an amount which is notional. This would be reading the word 'amount' separately and out of context with the entire sentence reproduced above. The sentence "any amount treated as income under any provision of this Ordinance" has to be read as a whole. Clearly, these words, when read as a whole, would convey ineluctably that the legislature may treat any amount as income and the use of word 'treated' is crucial and would connote an amount which may be deemed or imputed as income. Otherwise there was no logical basis for insertion of these words so as to confer power on the legislature to treat certain amounts as

income. The purpose of these words cannot be defeated by a fantastic set of reasoning to achieve a desired result.

xii) It is not unusual for the courts to rely upon Parliamentary debates as an extrinsic material to gauge the intention of the legislation. The milestone case in relation to looking beyond the legislative wording was Pepper v. Hart (1992) 65 TC 421 which opened up transcendent interpretative possibilities by allowing reference to parliamentary record to establish parliamentary intention while interpreting legislation which is ambiguous or obscure. The case of Pepper has been cited with approval by our superior courts which have also used the concept to analyse the parliamentary debates for reaching the true intention behind a legislative measure.

xiii) Suffice to say that the courts cannot use the device of reading down in order to re-write a statutory provision. There is no compulsion on the courts to save legislation and if it is beyond the legislative competence and is unconstitutional, it must be struck down and not saved.

xiv) Mr. Shahbaz Butt, Advocate, representing some of the respondents drew a comparison between section 7E and section 37 of the Ordinance to assert that the taxpayers were being subjected to double taxation as these were taxes of same genus. This argument was not raised before the learned Single Judge and thus there is no obligation on us to consider it at the appellate stage. Yet, the argument is rebutted with the following observations: • Section 7E concerns with tax on income whereas section 37 is a tax on capital gains. • Income is either earned or deemed to be earned from various sources during the tax year regardless of sale or disposal of any asset whereas tax on capital gains is a tax on profits arising from eventual sale/ disposal of an asset. (…) It is clear from the above illustrations that the incidence of tax in respect of both sections 7E and 37 of the Ordinance are distinct and separate and are triggered under different circumstances. There is no duplication in the imposition of taxes under Section 7E and 37 and the question of double taxation does not arise.

xv) The classification which was made in section 7E is in respect of capital assets allotted to certain persons which include Shaheeds of Pakistan Armed Forces or their dependents, persons who died while in the service of Pakistan Armed Forces or Federal or Provincial Government etc. It must be borne in mind that the exclusion is in respect of capital asset and not in respect of persons and strictly therefore the provisions of Article 25 are not attracted. If the rule applied by learned Single Judge were to hold sway, the entire Sub-section (2) should have been struck down being discriminatory and not merely clause (d) of Sub-section (2).

Conclusions: i) The judiciary can afford no redress against taxation so long as the legislature in imposing it keeps within the limits of legislative authority and violate no express provisions of the constitution.

ii) The word ‘income’ takes colour and content according to the circumstances and the times in which it has been used in the 2001 Ordinance.

iii) The object of section 7E of Income Tax Ordinance, 2001 cannot be frustrated by holding that the legislature does not have power to tax deemed income.
iv) The legislature has intended to tax an asset apparently lying dormant and not generating an income in cash but indeed capable of increment in value. It is that value addition that section 7E seeks to tax. Notionally the augmentation in value does become part of taxpayer's income.
v) Taxable income as envisaged in the Ordinance would mean the total income of a person for the year reduced by the total of any deductible allowances.
vi) Section 7E presumes that a resident person has certain capital assets situated in Pakistan which though do not generate any income chargeable to tax but may be so charged to a notional income which the resident person shall be treated to have derived. The measure of tax is an amount equal to 5% of the fair market value of capital assets situated in Pakistan.
vii) Entry 47 applies to the provisions of Section 7E and is a tax on income duly covered by the term as defined in section 2(29) of the 2001 Ordinance.
viii) If the legislature chooses to impose a tax on certain set of persons and to grant exemption in respect of the other set of persons. By this mere categorization the tax will not be unconstitutional.
ix) A person may be subjected to more than one taxes on his income to be caught by double taxation. In case the law permits clearly and without equivocation, such a tax would not be unlawful by the mere fact that it taxes the same income twice over.
x) The term 'income' has not been defined in the Constitution. The intention is clear that the framers of the Constitution intended the term to be elastic in the hands of the legislature to define it in whatever manner it deems appropriate in a given case.
xi) The sentence "any amount treated as income under any provision of this Ordinance" connotes that the legislature may treat any amount as income and the use of word 'treated' is crucial and would connote an amount which may be deemed or imputed as income.
xii) It is not unusual for the courts to rely upon Parliamentary debates as an extrinsic material to gauge the intention of the legislation.
xiii) Suffice to say that the courts cannot use the device of reading down in order to re-write a statutory provision.
xiv) Incidence of tax in respect of both sections 7E and 37 of the Ordinance are distinct and separate and are triggered under different circumstances.
xv) The classification which was made in section 7E is in respect of capital assets allotted to certain persons. That exclusion is in respect of capital asset and not in respect of persons and strictly therefore the provisions of Article 25 are not attracted.

28. **Lahore High Court**
Muhammad Younas Khan and 15 others v. Sui Northern Gas Pipelines Limited (SNGPL) Through its Managing Director and 4 others
Writ Petition No.4315 of 2023
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC748.pdf

Facts: The petitioners, registered distribution contractors, challenged a memorandum issued by Sui Northern Gas Pipelines Limited (SNGPL) regarding security deposits and conditions for pre-qualification.

Issues: i) Whether a memorandum can be given effect retrospectively?
ii) Whether High Court can settle the terms and contract inter-se parties?
iii) In what situations High Court exercises its constitutional jurisdiction in the matter of contractual obligations?
iv) Whether anyone can be deprived to earn his livelihood because of the unfair or discriminatory treatment on the part of any State functionary?

Analysis: i) It is trite law that a notification/memorandum or an executive order cannot operate retrospectively unless it is specifically provided therein.
ii) There is no cavil that High Court in exercise of constitutional jurisdiction can neither settle the terms and conditions of the contract inter-se parties nor direct the executive to insert or exclude certain condition in the contract, which undoubtedly is within the domain of the executive.
iii) There is also no denial to the proposition that in the matter of enforcement of contractual obligations, High Court in ordinary course abstains to exercise constitutional jurisdiction for enforcement of the terms and conditions of the contract or to remedy the breach of contract but at the same time the constitutional jurisdiction cannot be abridged if some perversity or patent illegality is floating on the surface of the record. It is an oft repeated principle of law that though constitutional jurisdiction ordinarily should not be exercised in case of breach of contract but if such breach does not entail any inquiry or examination of minute or controversial questions of fact, if committed by Government, semi-Government or Local Authorities it can adequately be addressed in exercise of jurisdiction contemplated under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.
iv) Needless to mention here that right of trade and business is guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973. While discharging official functions efforts should be made to ensure that no one should be denied to earn his livelihood because of the unfair or discriminatory treatment on the part of any State functionary.

Conclusion: i) It is trite law that a notification/memorandum or an executive order cannot operate retrospectively unless it is specifically provided therein.

ii) There is no cavil that High Court in exercise of constitutional jurisdiction can neither settle the terms and conditions of the contract inter-se parties nor direct the executive to insert or exclude certain condition in the contract.
iii) See above in analysis clause.
iv) While discharging official functions efforts should be made to ensure that no one should be denied to earn his livelihood because of the unfair or discriminatory treatment on the part of any State functionary.

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29. **Lahore High Court**
Mehwish Mughal and another v. Amira Bukhari etc.
C.R.No.16524/2023
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2024LHC726.pdf

Facts: Through this civil revision the petitioners have challenged the validity of the judgment & decree passed by the Civil Judge who dismissed the suit for declaration and cancellation of documents, possession through partition with permanent injunction filed by the petitioners and also assailed the judgment & decree passed by the Additional District Judge who dismissed the appeal of the petitioners.

Issues: i) Whether presumption of truth is attached to the judicial proceedings and records?
ii) Whether onus to prove of alleged fraud in inheritance mutation must be dislodged by the defendant once it shifted from plaintiff side?
iii) Whether inheritance opens to the legal heirs right after the death of the person according to principles of Quran and Sharia and any unauthorized entry in the revenue record can affect such right?
iv) What is the main object of registration and sanctioning of mutation of inheritance and whether limitation can run against the inheritance matters as well as against any patently void order/entry?
v) Whether High Court has jurisdiction to interfere with illegal and perverse concurrent findings of the lower fora?

Analysis: i) It is settled law that presumption of correctness/sanctity/truth is attached to the judicial proceedings/judicial record.
ii) Once the plaintiffs challenged the inheritance mutation while in the plaint asserting the existence of fraud and subsequently proved the same through cogent evidence, thus onus was shifted upon the defendants to prove the validity of the said mutation through affirmative and corroborative evidence (…)
iii) The moment predecessor closed his eyes, all his legal heirs according to the principles of Quran & Sharia became absolute owner to the extent of their respective shares in estate of the deceased and without resorting to the legal course of independent transaction, the said ownership cannot be taken away by means of any unauthorized entry in the revenue record and if any entry is made in

clandestine manner with collusiveness of the revenue staff, such entry is devoid of any legality and creating any valid right (…)
iv) The main object of registration and sanctioning of mutation of inheritance is mere formality to update the official record whereas all legal heirs of a deceased become absolute owners of the property to the extent of their respective share until and unless they themselves voluntarily and legally further alienate their said share/right and the said legal heirs by operation of law become joint owners in the estate having constructive possession over their share and no limitation runs against the inheritance matters as well as against any patently void order/entry.
v) When the decisions of the lower fora suffer from blatant misreading and non-reading of the evidence as well as misapplication of law, as such the same are not sustainable in the eyes of law and are liable to be set-aside than High Court is well within jurisdiction under section 115 CPC to interfere with illegal and perverse concurrent findings of the lower fora (…)

Conclusion: i) Yes, presumption of truth is attached to the judicial proceedings and records.
ii) Yes, onus to prove of alleged fraud in inheritance mutation must be dislodged by the defendant once it has shifted from plaintiff side.
iii) Yes, inheritance opens to the legal heirs right after the death of the person according to principles of Quran and Sharia and any unauthorized entry in the revenue record cannot affect such right.
iv) The main object of registration and sanctioning of mutation of inheritance is mere formality to update the official record and no limitation can run against the inheritance matters as well as against any patently void order/entry.
v) Yes, High Court has jurisdiction under section 115 CPC to interfere with illegal and perverse concurrent findings of the lower fora.

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30. **Lahore High Court**
Bakhsh v. Member (Judicial VII), Board of Revenue etc.
Writ Petition No. 56073/2020
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2024LHC737.pdf

Facts: The Petitioner obtained state charagah land under lease scheme but lease was cancelled due to non-payment of lagaan. Thereafter, the petitioner filed application for purchase of the state land through private treaty which was dismissed. The respondents No.3 & 4 filed separate applications for lease of state land under lambardari grant. District Collector allotted land to the respondents No.3 & 4, leading to legal challenges and appeals. The Member, Board of Revenue recalled the consolidated order passed in revision petitions of the parties, set aside the order passed by the Additional Commissioner (Revenue) and upheld the order passed by the District Collector. Hence, these two writ petitions have been filed.

Issues: i) Whether possession of tenant/lessee over the land leased amount to illegal after expiry/cancellation of lease and law always leans in favour of the law abiding

person?

ii) Whether proprietary rights can be granted on charagah land or it can be sold through private treaty to any person?

iii) Whether state charagah land can be converted into simple state land for its onward allotment against any sort of claim, grant of its proprietary rights or any other alternative use?

iv) Whether state land under lumberdari grant can be granted second time to same person or his family member?

Analysis: i) The appeals of the petitioners were also dismissed thus the petitioners were no more tenants/lessees over the land in question and after expiry/cancellation of lease, the possession of the petitioners over the said land is that of an illegal nature. It is well settled that law always leans in favour of the law abiding persons and lends nil support to the illegal occupants, usurpers, transgressors, encroachers and grabbers of the State land.

ii) Moreover, admittedly, land in question is a Charagah land and under the law/policy neither its proprietary rights can be granted nor it could be sold through private treaty to any person. With regard to the Charagah land and its settled objectives of utilization, a policy Notification dated 3rd September 1979 (under Temporary Cultivation Lease Scheme) and Notification dated 20th April, 1983 were issued by Colonies Department which placed an embargo on the grant of proprietary rights of Charagah land and such lands were expressly excluded from any grant or grant of proprietary rights under Temporary Cultivation Lease Scheme. In Clause 2 of the aforementioned notification dated 03.09.1979 following lands have been excluded from every grant… Through another Notification No.1925-83/1253-CLI dated 20th April, 1983, the Govt. of the Punjab Colonies Department, the Charagah Land was excluded from any grant of proprietary rights… In the subsequent Notification No.7402-86/374-CLI dated 1st February, 1995, issued by the Board of Revenue, Punjab, Lahore, a clarification has been furnished regarding the land of prohibited Zone previously enunciated under notifications of 1979 and 1983 for the purpose of grant of proprietary rights… In the policy notification dated 04.02.1998, the exception from grant of proprietary rights of state charagah land remained intact… Perusal of the afore quoted policy notifications makes it abundantly clear that Charagah lands have expressly been excluded from any kind of grant or grant of proprietary rights, as such its any alienation or grant under Lambardari grant will straightway offend policies on the subject.

iii) The successive policies/notifications on the subject manifestly place restrictions on conversion of the State charagah land into simple state land for its onward allotment against any sort of claim, grant of its proprietary rights or its any other alternative use. Further change of character of the Charagah land was subservient to the manifestly described wider scope of public purpose, which is to be adjudged objectively by the Board of Revenue.

iv) As regard the grant of lease of the land in question to respondents No.3/

Lambardar is concerned, suffice it to say that respondent No.3 is descendant of Latkan s/o Karam who had earlier obtained land under Lumberdari grant and then proprietary rights were granted to him on 19.01.1957 and mutation was accordingly incorporated on 22.03.1957, thus the second time allotment of the State land under lumbardari grant is not warranted by law. Reference in this regard is made to Clause 16(h) of the General Colony Conditions 1938 wherein the word "grantee"… Similarly "tenant" has been defined in Section 3 of the Colonization of Government Lands (Punjab) Act, 1912…The Colonies Department, Government of the Punjab vide notification No.3910-76/2686-CV dated 13.07.1976 while describing the conditions for disposal of Lambardari grant held that the grant of state land shall be subject to the General Colony Conditions 1938…As the predecessor of respondent No.3 had already been granted state land under Lambardari Grant as such the respondent No.3 is not entitled for any new allotment under the said grant. As perNotification No.315-90/1593-CV dated 29.10.1990, a family member cannot obtain more than one lot as Lumberdari Grant as such the respondent No.3 is not eligible for grant of land. The Colonies Department, Government of Punjab has issued notification dated 17.01.2006 regarding statement of conditions for grant of state land on lease to the Lambardars wherein in Clause 7, the ineligibility criteria has been given…

Conclusion: i) The possession of tenant/lessee over the land leased amount to illegal after expiry/cancellation of lease and law always leans in favour of the law abiding person.
ii) Proprietary rights cannot be granted on charagah land and it cannot be sold through private treaty to any person.
iii) State charagah land cannot be converted into simple state land for its onward allotment against any sort of claim, grant of its proprietary rights or any other alternative use.
iv) State land under lumberdari grant can be granted second time to same person or his family member.

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31. **Lahore High Court**
The State v. Muhammad Kashif
Capital Sentence Reference No. 01 of 2020
Muhammad Kashif Vs. The State
Criminal Appeal No. 285- J of 2020
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2024LHC587.pdf

Facts: Convict lodged Criminal Appeal through jail assailing his conviction and sentence. The trial court submitted capital sentence reference under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant.

Issues: i) Whether the confession before Investigating officer or other Police Officials during the custody is admissible as per law?

ii) When article 40 of the Qanun-e-Shahadat Order, 1984 comes into operation?
iii) Whether prosecution primarily is bound to establish guilt against the accused without a shadow of reasonable doubt?
iv) Whether all the citizens, regardless of religion, are equal before law?
v) Who is to prove the guilt of the accused?
vi) Whether a single circumstance is enough to extend the benefit of doubt to the accused?

Analysis: i) The accused, while in the custody of the police, if confessed to his guilt before the Investigating Officer of the case and other police officials, the same cannot be considered as proof against the accused. Articles 38 and 39 of the Qanun-e-Shahadat Order,1984 are quite clear on the subject and such admission, in view of the above said Articles of the Qanun-e-Shahadat Order,1984, is inadmissible.

ii) Article 40 of the Qanun-e-Shahadat Order, 1984 comes into operation only if and when certain facts are deposed to as discovered in consequences of information received from an accused person in police custody. Thus, in order to apply Article 40 of the Qanun-e-Shahadat Order, 1984, the prosecution must establish that information given by the accused led to the discovery of some fact deposed by him and the discovery must be of some fact which the police had not previously learnt from any other source.

iii) It is a cardinal principle of justice and law that only the intrinsic worth and probative value of the evidence would play a decisive role in determining the guilt or innocence of an accused person. Even evidence of an uninterested witness, not inimical to the accused, may be corrupted deliberately while evidence of an inimical witness, if found consistent with the other evidence corroborating it, may be relied upon…It is a known and settled principle of law that the prosecution primarily is bound to establish guilt against the accused without a shadow of reasonable doubt by producing trustworthy, convincing and coherent evidence enabling the Court to draw a conclusion whether the prosecution has succeeded in establishing accusation against the accused or otherwise and if it comes to the conclusion that charges, so imputed against the accused, have not been proved beyond a reasonable doubt, then the accused becomes entitled to acquittal. In such a situation the Court has no jurisdiction to abridge such right of the accused. To ascertain as to whether the accused is entitled to the benefit of the doubt the Court can conclude by considering the agglomerated effect of the evidence available on record…

iv) Citizens, regardless of religion, are equal before law and entitled to equal protection thereof and it is so guaranteed under the Constitution.

v) It is a well settled principle of law that one who makes an assertion has to prove it. Thus, the onus rests on the prosecution to prove guilt of the accused beyond reasonable doubt throughout the trial. Presumption of innocence remains throughout the case until such time the prosecution on the evidence satisfies the Court beyond reasonable doubt that the accused is guilty of the offence alleged against him. There cannot be a fair trial, which is itself the primary purpose of

criminal jurisprudence, if the judges are not able to clearly elucidate the rudimentary concept of the standard of proof that the prosecution must meet in order to obtain a conviction.

vi) Where there is any doubt in the prosecution story, benefit should be given to the accused, which is quite consistent with the safe administration of criminal justice…It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusion: i) In view of the Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984, the confession before Investigating officer or other Police Officials during the custody is inadmissible.

ii) Article 40 of the Qanun-e-Shahadat Order, 1984 comes into operation only if and when certain facts are deposed to as discovered in consequences of information received from an accused person in police custody.

iii) It is a known and settled principle of law that the prosecution primarily is bound to establish guilt against the accused without a shadow of reasonable doubt by producing trustworthy, convincing and coherent evidence enabling.

iv) Citizens, regardless of religion, are equal before law and entitled to equal protection thereof and it is so guaranteed under the Constitution.

v) The onus rests on the prosecution to prove guilt of the accused beyond reasonable doubt throughout the trial.

vi) It is not necessary that there should be so many circumstances rather a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused.

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32. **Lahore High Court**
Netherlands Financierings Maatschappij Voor Ontwikkelingslanden N.V. (F.M.O.) v. Morgah Valley Limited and SECP
Civil Original No.08 of 1989
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1.pdf

Facts: The Respondent Company failed to pay back loan amount secured from the Petitioner through agreement executed between them, where-after order for winding up the respondent Company was passed in the Petitioner's petition and Civil Appeal preferred by the Respondent Company was dismissed in default by the Supreme Court of Pakistan, thus, execution proceedings were conducted ahead, but not a single penny was paid to the Petitioner. This detailed order is intended to decide aforementioned longstanding dispute pending amongst the parties in relation to non-payment of loan amount mentioned afore, which has now finally been paid by the Respondent Company to the Petitioner through process of mediation.

Issues: i) What is mediation?
ii) How mediation may benefit parties to litigation?
iii) What is the value of international covenants/declarations in absence of availability of specific law in Pakistan?
iv) Whether the Court may initiate mediation amongst parties to *lis*, brought under the Companies Ordinance, 1984, for resolution of a corporate dispute under Section 276 and 277 of the Companies Act, 2017?

Analysis: i) Mediation involves the intervention of a third person/mediator to assist the parties in negotiating jointly acceptable resolution of issues in conflict. The mediator, as a neutral third party, in the process of mediation views the dispute objectively and assists the parties in considering alternatives and options that they might not have considered.
ii) Mediation tends to be a faster method of resolution of disputes, putting more control in the hands of the parties involved. The mediation process preserves relationship of parties as they actively engage in finding mutually agreeable solutions. The flexibility of mediation allows for a more personalized and tailored resolution to the specific needs and concerns of the parties involved.
(iii) In case of absence of specific provisions in the law of country, the approach to follow guidelines and principles formulated in international covenants has already been recognized by Supreme Court of Pakistan in various cases.
iv) No specific and clear provision enabling the Court to initiate mediation process is available in the Companies Ordinance, 1984 and so is the case in the Companies (Court) Rules, 1997. However, Section 276 (1) of the Companies Act, 2017 authorizes the parties to proceedings before the Securities Exchange Commission of Pakistan or the Appellate Bench to apply, with mutual consent, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel. Moreover, under Section 277 of the Act ibid, a company, its management or its members or creditors may by written consent, directly refer a dispute, claim or controversy arising between them or between the members or directors inter-se, for resolution, to any individual enlisted on the mediation and conciliation panel maintained by the Securities Exchange Commission of Pakistan under Section 276(2) of the Act ibid. The Courts are also expected to decide the disputes brought before them by the parties within a reasonable time and in an expeditious manner.

Conclusion: i) Mediation is a process where the parties meet with a mutually selected impartial and neutral person who assists them in negotiating their differences.
ii) The mediation can be a potent tool, offering parties to *lis* the chance to make substantial cost savings if a settlement can be reached and it helps parties to identify aspects of the dispute that may not warrant litigation.
(iii) Though international covenants/declarations are not binding upon courts of the Pakistan, however, they carry quite a considerable persuasive value in absence of specific law in the Country.
iv) Making basis upon the strong principles developed by Supreme Court of Pakistan to safeguard the interest of the Company and to resolve corporate

dispute, Section 276 and 277 of the Companies Act, 2017 can be invoked in order to protect the interest of the Company by initiating the process of the Early Neutral-Party Evaluation and then mediation.

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33. **Lahore High Court**
Zafar v. The State
Criminal Appeal No.79782-J/2022
Mazhar v. The State
Criminal Appeal No.79783-J/2022
Feroz v. The State
Criminal Appeal No.79784-J/2022
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2024LHC579.pdf

Facts: Through these criminal appeals the appellants assailed their convictions and sentences passed by Addl. Sessions Judge/trial court in case/FIR registered under Sections 302, 34 PPC.

Issue: Whether direct surviving legal heirs of the deceased are quite competent to effect compromise under Section 345 (2) of Cr.P.C., where punishment has been passed as Ta'zir?

Analysis: Admittedly in this case, appellants have been convicted under Section 302 (b) PPC and sentenced as Ta'zir. It is trite law that direct surviving legal heirs of the deceased are quite competent to effect compromise under Section 345 (2) Cr.P.C. where punishment has been passed as Ta'zir. In this case, two widows of the deceased, son, daughters of the deceased are the only surviving legal heirs of the deceased as father and mother of the deceased, respectively have died. It is worth mentioning here that father of the deceased died prior to murder of the deceased, however, though mother died after the occurrence yet her legal heirs cannot be termed as legal heirs of deceased by any stretch of imagination for the purpose of compromise in this case…….. Though as per reports of learned Sessions Judge, Chiniot (mentioned above), compromise is incomplete between the legal heirs of the deceased and the appellants because brother and sister of the deceased, respectively have not entered into compromise, however, keeping in view the dictum laid down in Muhammad Yousaf's case (supra), Zulifqar and Mst. Khairan Bibi (mentioned above) are not legal heirs of the deceased of the case for the purpose of compounding the offence as this is case of Ta'zir, so aforementioned reports of learned Sessions Judge, to said extent are misconceived and as such discarded.

Conclusion: Direct surviving legal heirs of the deceased are quite competent to effect compromise under Section 345 (2) of Cr.P.C., where punishment has been passed as Ta'zir.

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34. **Lahore High Court**
Ghulam Mustafa v. Muhammad Mushtaq, etc.
Civil Revisions No. 390, 479, 480 of 2020 and Crl.Org. No.11 of 2021
Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC560.pdf

Facts: These civil revisions are filed against orders and judgments of Civil Judge Ist Class and Additional District Judge whereby objection petition filed by respondent No. 1 was allowed, and appeals filed by petitioners were dismissed. Similarly, Crl. Org. No.11-W of 2021 in Civil Revision No.390 of 2020 filed by petitioner is also being decided through this single judgment.

Issues: i) Whether a party to the suit, which has finally been decreed, can move any application before the court for resolution of a question arising out of execution of the decree where no execution petition was filed by the decree holder?
ii) What matters are covered under exclusive jurisdiction of an executing court under section 47 of C.P.C?
iii) Whether concurrent findings of both the courts below on a question of fact can be taken to any exception at revisional stage by High Court?
iv) What are the basic ingredients for a petitioner to initiate contempt proceedings in respect of violation of any injunctive order and what is required for awarding punishment under Order XXXIX Rule 2(3) of CPC?

Analysis: i) … So, all questions that arise between parties or their representatives having nexus with the execution, discharge or satisfaction of the decree must be decided under section 47 of CPC. The words "all questions arising" should be read to denote as "all questions directly arising". These words only mean that the questions must be such that they relate to or affect the rights of the parties to the suit during the course of execution of decree. The expression "relating to execution" has not been defined elsewhere in the Code of Civil Procedure probably with the intention of leaving it flexible, vividly with the purpose to include any question that either hinders or affects the rights of any of the parties and it would even apply to a dispute arising in relation to execution of a decree after it had been executed as it would be a dispute relating to the execution of a decree before it had been executed. The question as to deficient or flawed execution essentially is one relating to the execution of a decree, therefore, such question must also be answered and resolved by the executing court as per the provisions of section 47 of CPC. Similarly, the words "the court executing the decree" in no way restrict the applicability of section 47 of CPC only to the proceedings initiated by the decree holder. This section would also be applicable to the proceedings initiated by the judgment debtor in case of flawed execution of decree. Therefore, filing of an application by one of the judgment debtors even in the absence of any execution petition before the court could not be objected to on the ground that no execution petition was filed by the judgment debtor for the

execution of the decree particularly when the right of judgment debtor has been affected by the wrong implementation of decree.

ii) There is no cavil with the proposition that the spirit and object of the provisions of section 47 of CPC is to provide swift relief to the parties in a matter arising out of execution of decree. The exclusive jurisdiction of an executing court in view of the scope of section 47 of CPC will indeed cover all matters concerned with the execution including wrong/flawed implementation of decree, discharge or satisfaction of an existing decree between the same parties.

iii) Where concurrent findings of both the courts below on a question of fact are based on proper appreciation of material available on the record and do not suffer from any illegality or material irregularity affecting the merits of the case, same cannot be taken to any exception at revisional stage.

iv) …it may be observed that in the event of initiating contempt proceedings in respect of violation of any injunctive order, the person wishing to initiate contempt proceedings against the contemnors is required to have provided all necessary details qua violation of the injunctive order… There is no cavil with the proposition that contempt proceedings under the provisions of order *XXXIX* Rule 2(3) CPC are considered *quasi* criminal proceedings since same entail punishment of detention for a period not exceeding six months, therefore, same are to be proved upto hilt and all doubts are required to be excluded before awarding punishment in terms of Order XXXIX Rule 2(3) of CPC.

Conclusion: i) Filing of an application by one of the judgment debtors even in the absence of any execution petition before the court could not be objected to on the ground that no execution petition was filed by the judgment debtor for the execution of the decree particularly when the right of judgment debtor has been affected by the wrong implementation of decree.

ii) The exclusive jurisdiction of an executing court in view of the scope of section 47 of CPC will indeed cover all matters concerned with the execution including wrong/flawed implementation of decree, discharge or satisfaction of an existing decree between the same parties.

iii) See corresponding analysis above.

iv) In the event of initiating contempt proceedings in respect of violation of any injunctive order, petitioner is required to provide all necessary details qua violation of the injunctive order. Whereas, contempt needs to be proved upto hilt and all doubts are required to be excluded before awarding punishment in terms of Order XXXIX Rule 2(3) of CPC.

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35. **Lahore High Court**
Muhammad Ghause v. Additional District Judge, Bahawalpur & 02 others
W.P. No.7630 of 2018
Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC676.pdf

Facts: This is a petition that has been filed under Article 199 of the Constitution of the

Islamic Republic of Pakistan, 1973 to assail judgments and decrees passed by Judge Family Court and Additional District Judge, whereby suit instituted by respondent against petitioner for recovery of Rs.5,00,000/- as additional dower was decreed and same was upheld by Appellate Court.

Issues: i) Whether findings over factual controversy recorded by courts below can be reviewed by High Court in constitutional jurisdiction?
ii) Whether stipulation agreed between the parties qua payment of certain amount on the event of divorce or contracting of second marriage curtail the right of husband to pronounce divorce or even to contract second marriage?
iii) Whether mentioning the dower is essential to the validity of marriage?
iv) Whether the payment of dower could be deferred for an indefinite period?
v) Whether any amount/property agreed to be paid by the husband to wife on the happening of some future event, could be counted as a deferred dower?
vi) When the deferred dower becomes payable when no specific or definite period is settled for its payment?

Analysis: i) The findings over factual controversy recorded by both the courts below having jurisdiction to decide the matter can hardly be reviewed while invoking the extraordinary constitutional jurisdiction of this Court. In case "Shajar Islam v. Muhammad Siddique" (PLD 2007 SC 45), the Supreme Court observed that this Court should not interfere with the findings on controversial questions of facts based on evidence even if those findings were erroneous. (…) Last but not the least, this Court in its extraordinary constitutional jurisdiction would not take any exception to the judgments passed by the courts having jurisdiction and lawful authority to decide the matter on merits unless some jurisdictional error or blatant illegality has been shown to be committed causing miscarriage of justice.
ii) Needless to observe that the stipulation agreed between the parties qua payment of certain amount by petitioner to the respondent on the event of divorce or contracting of second marriage, in no way curtail the right of husband to pronounce divorce or even to contract second marriage. Any stipulation or condition agreed between the parties mutually and with their free consent cannot be considered as an absolute bar to either pronounce divorce or to contract second marriage. (…) As far as contractual obligation in column 19 is concerned, it was agreed and factum of Nikah Nama is not disputed. The amount agreed in terms of clause-19 of Nikah Nama is spousal support - having all the attributes of alimony - wherein reasonable benefits were offered to enable ex-wife to have dignified and comfortable life. There is no restriction that husband cannot agree to arrange for maintenance or agree to extend fiscal advantage to the wife, even after the divorce. This nature of the benefit / advantage, which is not in any manner is restricting right of divorce, is in fact an act of bestowing benefit or gift upon wife to support her, hence, cannot be termed as illegal or contrary to the spirit of ISLAM and teachings of Quran." (…) An agreement for dower was nonetheless binding on the petitioner as the same was made at the time of solemnization of

marriage. Even as per para 336(2) of the Principles of Muhammadan Law by D.F. Mulla, if the marriage was consummated, the wife becomes entitled to immediate payment of whole of the unpaid dower both prompt and deferred.

iii) Dower is a sum of money or other property which wife is entitled to receive from husband in consideration of marriage. The word 'consideration', however, cannot be deemed at par with the sense in which the word is used under the provisions of the Contract Act, 1872. A marriage is valid although no mention be made of the dower by the contracting parties as the term Nikah in its literal sense signifies a contract of union which is fully accomplished by the bond of a man and woman. Moreover, payment of dower is enjoined merely as a token of respect, therefore, the mention of it is not absolutely essential to the validity of marriage.

iv) There being no classification of the dower as prompt and deferred in the Holy Quran and Sunnah, the deferment of payment of dower for an indefinite period with the consent of the wife was not prohibited. (…) There being no classification of the dower as prompt and deferred in the Holy Qur'an and Sunnah, the deferment of the payment of dower for an indefinite period with the consent of the wife is not prohibited, but if a wife makes demand of its payment, the husband being under an obligation to make payment of the same, cannot further defer it on any excuse. The provisions of section 6(5) of the Muslim Family Laws Ordinance, 1961 being not in conflict with Islam, it is mandatory for a husband to pay entire amount of dower, whether prompt or deferred, in case of entering into contract of second marriage in presence of first wife without her permission.

v) Any amount/property agreed to be paid by the husband to wife on the happening of some future event, by all intents and purposes be counted as a deferred dower to be paid by the husband on the happening of such event. While discussing the scope and nature of prompt and deferred dower (…) Dower has important uses which affect the domestic life of the Muhammedans. The law giver of Islam was anxious to safeguard the wife against the arbitrary exercise of the right of divorce by the husband. If she survived her husband and his other heirs illtreated her, she could not be thrown into street but would be able, apart from her legal share, to enforce against them her claim for dower which must be paid out of the heritage before the assets of the husband are distributed among the heirs. This is the keystone of the Muhammedan Law of dower in its purity. (…)

vi) Where no specific or definite period is settled for the payment of deferred dower, wife would become entitled to dower at the event of dissolution of marriage or on the death of any of the spouses. If deferred dower is agreed to be paid on the happening of some specified event, the same would become payable on the occurrence of that specified event.

Conclusions: i) The findings over factual controversy recorded by the courts below can hardly be reviewed by High Court while invoking the extraordinary constitutional jurisdiction unless some jurisdictional error or blatant illegality has been shown to be committed causing miscarriage of justice.

ii) The stipulation agreed between the parties qua payment of certain amount by petitioner to the respondent on the event of divorce or contracting of second marriage, in no way curtail the right of husband to pronounce divorce or even to contract second marriage.

iii) The mentioning of dower is not absolutely essential to the validity of marriage.

iv) Deferment of payment of dower for an indefinite period with the consent of the wife is not prohibited.

v) Any amount/property agreed to be paid by the husband to wife on the happening of some future event, by all intents and purposes be counted as a deferred dower to be paid by the husband on the happening of such event.

vi) Where no specific or definite period is settled for the payment of deferred dower, wife becomes entitled to dower at the event of dissolution of marriage or on the death of any of the spouses. If deferred dower is agreed to be paid on the happening of some specified event, the same would become payable on the occurrence of that specified event.

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36. **Lahore High Court**
Hafiz Malik Muhammad Umar v. Government of Punjab, etc.
Writ Petition No.15167 of 2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC709.pdff

Facts: The petitioner applied for the post of Naib Qasid pursuant to an advertisement. The petitioner was awarded additional marks for having qualification equivalent to matric but was not appointed. The petitioner filed writ which was dismissed and the Intra Court Appeal was preferred which was disposed of and the matter was remitted to the Appellate Authority to re-examine the same. Through the impugned order, the said representation/appeal has been dismissed, hence, instant writ petition.

Issue: What is purpose of preparation and fixation of waiting list in any recruitment process and whether subsequent improvement in deficiency of requisite qualification would operate retrospectively?

Analysis: This Court is of the opinion that, in any recruitment process, the purpose of preparation and affixation of the waiting list is that if any selected candidate does not join then the candidate next in line would be considered for appointment. Certainly, the object of maintaining a waiting list is not to enable a candidate to make up any deficiency in his additional qualifications entitling him to the award of extra marks as the requisite qualification for a post has to be complete as on the cutoff/closing date of the job application. If someone is deficient with respect to the requisite qualification (including additional qualifications forming basis of award of extra marks) on the cut-off date/closing date, the subsequent improvement would not operate retrospectively unless some law and/or policy so envisages.

Conclusion: The purpose of preparation and affixation of the waiting list is that if any selected candidate does not join then the candidate next in line would be considered for appointment and the subsequent improvement would not operate retrospectively unless some law and/or policy so envisages.

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37. **Lahore High Court**
Muhammad Islam v. Bagh Ali (deceased) through LRs.
Regular Second Appeal No.230/2016.
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC626.pdf

Facts: Through this Regular Second Appeal, under Section 100 of the Code of Civil Procedure, 1908, the appellant, has laid challenge to the impugned judgments and decrees. Through the former judgment, the suit of the respondent, for specific performance of contract instituted on the basis of agreement to sell in respect of the suit property was decreed by the Trial Court and through the latter judgment, the appeal preferred by the appellant against the former judgment was dismissed.

Issue: Whether the suit for specific performance of the contract based on an agreement to sell can be decreed when the second marginal witness of the agreement is not produced by the vendee in compliance of Article 79 of the Qanun-e-Shahadat Order, 1984?

Analysis: The simple reading of Article 81 of the Qanun-e-Shahadat Order, 1984 shows that where the execution of a document is admitted by the executant himself, the examination of attesting witnesses is not necessary. Article 81 of the Qanun-e-Shahadat Order, 1984 is an exception to the general rule contained in Article 79 of the Qanun-e-Shahadat Order, 1984. If the agreement has been admitted in the prior suit by recording statement before the Trial Court, the non-production of both the marginal witnesses is not fatal. Moreover, in terms of Article 91 of the Qanun-e-Shahadat Order, 1984, presumption of genuineness is attached to documents forming part of the judicial proceedings.

Conclusion: The suit for specific performance of the contract based on an agreement to sell can be decreed when the second marginal witnesses of the agreement is not produced by the vendee in compliance of Article 79 of the Qanun-e-Shahadat Order, 1984 when the agreement has been admitted in the prior suit.

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38. **Lahore High Court**
Sabir Hussain v. Additional District Judge etc.
W.P No.993/2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC621.pdf

Facts: The petitioner instituted the suit for specific performance of an agreement to sell against contesting party, wherein he filed an application for comparison of thumb impression of said respondents over the agreement with their specimen/admitted thumb impressions, which application was dismissed. The said order has been upheld by the Revisional Court vide impugned order, hence, this petition.

Issues: i) Whether there is any hindrance in allowing an application for comparison of thumb impression?
ii) Is there any time limit stipulated for filing the application of comparison of the signatures and/or thumb impression through expert?
iii) Whether the competency to contract is to be decided on the basis of the report of the finger impression expert?

Analysis: i) In order to ensure that correct conclusion is reached in the matter, the court can look around for an evidence of un-impeccable caliber such as finger expert, more particularly, when there is a complete denial on part of the respondents/defendants that they have not affixed their thumb impression on the agreement.It is the right of a litigant to seek any possible assistance including comparison of the disputed thumb impressions, from the courts of law so as to discharge the burden of proof placed upon him.
ii)The object for production of evidence is to assist to the courts to reach a just conclusion and one such mode is an application for comparison of thumb impression, which is in the interest of justice to reach a fair, just and proper decision, even at the cost of some delay in conclusion of the trial. Mere fact that application for comparison of thumb impression has been moved after conclusion of entire evidence is not a cogent reason to dismiss the application.
iii) Even if it is proved that alleged thumb impression of one of the parties on the agreement is genuine, the same will merely go on to prove, or otherwise, the execution of the agreement without having any bearing on the competency of the said party.

Conclusion: i) The only hindrance in allowing an application for comparison of thumb impression could be the intention of plaintiff to fill in the lacunae of his case after the conclusion of evidence.
ii) No time has been stipulated for filing the application of comparison of the signatures and/or thumb impression through expert, in terms of Article 84 of the of *Qanun-e-Shahadat* Order, 1984.
iii) The competency to contract is a question of law and is to be decided by the trial court on the basis of applicable law and not on the basis of the report of the finger impression expert.

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39. **Lahore High Court**
Shaukat Ali v. Abdul Ghaffar
RFA No.245/2017
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC651.pdf

Facts: Regular First Appeal was filed against the order passed by the Additional District Judge in a suit, instituted by the respondent against the appellant, under Order XXXVII, Code of Civil Procedure, 1908 ("CPC"), for recovery of Rs.1,000,000/.

Issue: Whether the two marginal witnesses are mandated to appear and prove the execution of pronote and what is the effect of non-production of the marginal witnesses?

Analysis: In the instant case, the document in question is pronote which is not required by any law to be attested by two witnesses. Therefore, when a document is not required by any law to be attested, the failure to produce marginal witness is not fatal and detrimental to the case in such situation where the defendant of a case under Order XXXVII, CPC fails to put up a probable defence. However, this rule is not applicable in the present case, as observed above, since appellant showed probable defence and the burden to prove had shifted back to the respondent on account of denial by him to have executed any pronote and/or the receipt, therefore, the respondent was obligated to prove the issuance and execution of the pronote by producing both attesting witnesses of the pronote.

Conclusion: See analysis part.

LATEST LEGISLATION / AMENDMENTS

1. Vide Notification No. 07 of 2024 dated 23.01.2024, the Chancellor of the University of Child Health Sciences, Lahore approved "The University of Child Health Sciences Employees (Appointment, Terms and Conditions of Service) Statutes 2024".
2. Vide Notification No.15 of 2024 dated 01.02.2024 published in the official Punjab Gazette, the Governor of the Punjab has made "The Primary and Secondary Healthcare Department (Directorate of Drugs Control, Punjab) Service Rules, 2024".
3. Vide Notification No.17 of 2024 dated 06.02.2024 published in the official Punjab Gazette, the Governor of the Punjab has made "the Punjab Registration of Christian Divorce Rules, 2024".
4. Amendment in the Punjab Government Servants (Conduct) Rules, 1966 in Rule 21 and 22 vide Notification No. SOR-IV(S&GAD) 1-2/2023 published in the official Punjab Gazette through Notification No.18 of 2024 dated 06.02.2024.

5. Amendment in the Punjab Wildlife (Protection, Preservation, Conservation and Management) Rules, 1974 in Rule 3 vide Notification No.SOP(WL)12-13/2001-V published in the official Punjab Gazette through Notification No.19 of 2024 dated 07.02.2024.
6. Vide Notification No.20 of 2024 dated 14.02.2024 published in the official Punjab Gazette, the Governor of the Punjab has made "the Punjab Christian Marriage (Preparation and Submission of Returns of Solemnized Marriages) Rules, 2023".
7. Amendment in the Punjab Government Rules of Business, 2011 in the 1st & 2nd Schedule vide Notification No. SO(CAB-I)2-14/2012 published in the official Punjab Gazette through Notification No.21 of 2024 dated 14.02.2024.
8. Amendment in schedule of the Punjab Specialized Healthcare and Medical Education Department (Financial Management Cell) Employees Service Rules, 2018 vide Notification No. SOR-III(S&GAD) 1-3/2018(P) published in the official Punjab Gazette through Notification No.22 of 2024 dated 15.02.2024.
9. Amendments in the Schedule of Posts of the Punjab Emergency Service (Appointment & Condition of Service) Regulations, 2022 vide Notification No.1378/2024(ESD) published in the official Punjab Gazette through Notification No.24 of 2024 dated 16.02.2024.
10. Amendment in Schedule of the Chief Minister's Secretariat Household Staff Service Rules, 2012 vide Notification No. SOR-III(S&GAD) 1-19/2004 published in the official Punjab Gazette through Notification No.25 of 2024 dated 16.02.2024.

SELECTED ARTICLES

1. MANUPATRA
https://articles.manupatra.com/article-details/EXISTENCE-OF-ALTERNATIVE-REMEDY-AS-AN-OBSTACLE-FOR-AVAILING-WRIT-JURISDICTION

Existence of Alternative Remedy as An Obstacle for Availing Writ Jurisdiction by Rahul Goyal

ABSTRACT

This research explores the intricate relationship between the existence of alternative remedies and the impediments they pose to accessing writ jurisdiction. Writ jurisdiction, a potent legal mechanism often invoked to protect fundamental rights, faces challenges when alternative remedies are available to aggrieved parties. The study delves into jurisprudential foundations and examines judicial precedents to elucidate the conditions under which alternative remedies may serve as obstacles to the invocation of writs. The analysis encompasses both theoretical and practical dimensions, considering the balance between administrative efficiency and the imperative to safeguard individual rights. The research aims to provide a nuanced understanding of how the presence of alternative remedies shapes the contours of writ jurisdiction, influencing legal strategies and access

to justice. Additionally, it discusses potential reforms and jurisprudential developments that may enhance the coherence of this complex interplay within the legal framework.

2. MANUPATRA

https://articles.manupatra.com/article-details/STAMPING-OF-ARBITRATION-AGREEMENTS-UNRAVELLING-THE-ENFORCEABILITY-SAGAS-FINAL-VERDICT

Stamping of Arbitration Agreements: Unravelling the Enforceability Saga's Final Verdict by Ayushi Inani And Yashpal Jakhar

On 13 December 2023, a seven-judge bench of Supreme court in IN RE: INTERPLAY BETWEEN ARBITRATION AGREEMENTS UNDER THE ARBITRATION AND CONCILIATION ACT 1996 AND THE INDIAN STAMP ACT 1899 unanimously held that while unstamped agreements are inadmissible, they are not rendered void ab initio (void from the beginning) because of they are unstamped as it is a curable defect. The ruling made "a historic and fastest ever curative verdict" that will not only boost arbitration ecosystem in India but will promote India as an international arbitration hub. The judgement resolved the tussle that has been ongoing since 2011 in the judgement SMS Tea Estates Pvt. Ltd. V. Chandmari Tea Co.[1] The recent judgement overruled 3:2 judge bench in N.N Global case where court held that arbitration agreements on the basis of unstamping will be unenforceable and void ab initio.

3. MANUPATRA

https://articles.manupatra.com/article-details/With-great-power-comes-great-responsibility-Nexus-between-Law-Authority-Morality-and-Responsibility

With great power comes great responsibility: Nexus between Law, Authority, Morality, and Responsibility by Divyanshi Gupta

INTRODUCTION

Law, authority, morality, and responsibility initiating with the formulation of law sum up the major prerequisites required for the establishment of equity in a country. The total course of enacting, executing, and keeping an eye on the application of the laws by the Constitution of India includes parts of authority, morality, and responsibility. Several jurists have defined law, among which the definition provided by Austin, "Law is a command of the sovereign backed by a sanction," is the most prevalent. It is the responsibility of the legislature to formulate laws to resolve issues prevalent in the economy. Then the judiciary comes into the frame, whose responsibility it is to ensure that the laws formulated are just and in line with equity, good conscience, and the principles of natural justice. When a law is framed and is morally and legally just, it is the responsibility of executive authorities to ensure that the laws are carried out appropriately.

The subjects-law, authority, morality, and responsibility are not interchangeable yet work in coordination with each other. All these notions are mutually reinforcing and thus cannot function efficiently without balance among them. When a law gives authority to an individual, it is bundled with responsibilities to do the needful with their authority within the frame of an ethical and moral set of rules.

4. **Latest Laws**
https://www.latestlaws.com/articles/administrative-tribunals-types-roles-and-case-laws-212095/

Administrative Tribunals: Types, Roles, and Case laws By Yash Gupta

INTRODUCTION

Tribunals are quasi-judicial entities established to address matters such as resolving tax or administrative disputes. It performs many functions such as dispute resolution, determination of rights between conflicting parties, issuance of administrative rulings, review of previously issued administrative rulings, and other activities.

The term 'Tribunes,' denoting the 'Magistrates of the Classical Roman Republic,' serves as the etymological origin for the term 'Tribunal.' The term 'trial' pertains to the position of the 'Tribunes,' a Roman official who safeguards the citizens from the arbitrary conduct of aristocratic magistrates in both monarchy and republic. In broad terms, a tribunal refers to any entity or person with the authority to make decisions, pass judgments, or resolve claims or conflicts, irrespective of whether they are explicitly labelled as a tribunal.

5. **Harvard Law Review**
https://harvardlawreview.org/print/vol-136/precedent-reliance-and-dobbs/

Precedent, Reliance, and Dobbs by Nina Varsava

ABSTRACT

Our system of stare decisis enables and encourages people to rely on judicial decisions to form expectations about their legal rights and duties into the future, and to structure their lives and mentalities based on those expectations. In following precedent, courts serve the reliance interests of those subject to the law and accordingly support their autonomy, self-governance, and dignity. Despite widespread reliance on the precedents protecting the right to abortion, in Dobbs v. Jackson Women's Health Organization the Supreme Court declined to give any consideration to those interests. This move signals a notable shift in the Court's stare decisis jurisprudence and would seem to overrule Planned Parenthood of Southeastern Pennsylvania v. Casey as a precedent about precedent. This Article illuminates the treatment of stare decisis in the Dobbs majority opinion, focusing on its approach to reliance. I explain why the Justices joining that opinion determined that whatever reliance interests had attached to the precedents protecting the right to abortion were irrelevant for the purposes of a stare decisis analysis. The Justices' refusal to recognize the reliance interests at stake here, I argue, is inconsistent with the Court's previously prevailing stare decisis jurisprudence and is also mistaken as a matter of first principles, undermining basic rule of law values that stare decisis is meant to protect.

6. **Harvard Law Review**
https://harvardlawreview.org/print/vol-137/transinstitutional-policing/

Transinstitutional Policing By Sunita Patel

ABSTRACT

Policing has become a permanent fixture within other institutions and occurs in more ways and places than are often recognized. For race-class subjugated communities, this means policing has inserted itself into every facet of life, from education and health care to mass transit and housing. Police serve as instruments of control in many spaces and connect the bureaucratic management of safety inside formal institutions of care, learning, and public services. Police connect these safety services to ordinary street policing and wellness checks in the home.This Article provides a framework for analyzing policing within institutional settings. I examine K–12 schools, emergency departments, mass transit, veterans health care, public housing, and universities and colleges. This Article describes six features of transinstitutional policing. The first three — red flagging, street policing, and wellness checks — show how policing the public relies upon police presence within formal institutions. The second three — networked information, bureaucratic conflict and cooperation, and vulnerable privacy — tie surveillance of the public to transinstitutional policing. This framework highlights the susceptibility of institutions to the logics of policing and the ways policing undermines noncarceral and socially valuable institutional goals. This Article frames an emerging literature as a transinstitutional approach of studying policing across and between multiple institutional domains. Examining policing through a transinstitutional lens offers a deeper understanding of the corrosive influence of policing on spaces of learning, care, and public services. The punitive and carceral aspects of these settings become amplified and more visible when the institution of policing takes hold. The features analyzed here have made it easy for police leaders and bureaucratic administrators of these institutions to resist police reform, even though the locations I study are places where advocates and institutional clientele contest policing and broader carceral control. Part I provides a continuum of embedded policing and explains why I focused on these particular institutions. Parts II and III provide the six-feature framework. Part IV offers an analysis of how we got here and draws out lessons learned to further understand transinstitutional policing.

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BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-03-2024 to 15-03-2024)

A Summary of Latest Judgments Delivered by the Supreme Court of Pakistan & Lahore High Court, Legislation/Amendment in Legislation and important Articles

Prepared & Published by the Research Centre Lahore High Court

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Raja Amer Khan and another, etc. v. Federation of Pakistan through the Secretary, Law and Justice Division, Ministry of Law and Justice, Islamabad and others
Constitution Petitions No. 6 to 8, 10 to 12, 18 to 20 and 33 of 2023
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Sardar Tariq Masood, Mr. Justice Ijaz ul Ahsan, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Munib Akhtar, Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/const.p._6_2023_07032024.pdf

Facts: A Full Court was constituted by the Chief Justice of the Supreme Court of Pakistan to decide the petitions filed in the original jurisdiction of the Supreme Court, challenging the vires of the Supreme Court (Practice and Procedure) Act, 2023.

Issues: i) Whether phrase "subject to law" used in Article 191 of Constitution means only statutory law?
ii) Whether the phrase "subject to law" as used in Article 191 means subject to "substantive law" only?
iii) Whether the rule-making power of the Supreme Court is subservient to the superior constituent power and ordinary legislative power of the Legislature?
iv) Whether High Court in the exercise of its rule-making power can provide for constitution of benches for hearing appeals etc.?
v) Whether there is any constraint in entry 55 of Federal Legislative list with respect to enlargement of the jurisdiction of the Supreme Court and Parliament can curtail the jurisdiction of the Supreme Court?
vi) Whether legislature has power to legislate retrospectively and can take away vested rights or affect past and closed transactions?
vii) What approach can be adopted in case of doubt or difficulty in ascribing proper meaning to a provision or a word in a provision of law?
viii) What is provided by section 3 Supreme Court (Practice and Procedure) Act 2023, regarding exercise of suo motu jurisdiction of Supreme Court under Article 184(3) of the Constitution?

Analysis: i) The term "law" has, no doubt, been used in its generic and wider sense in some of the Articles of the Constitution, where it includes the common law; but when used along with the term "Constitution", as in Article 191, it means as per my understanding the "statutory law" only. So, we can say that in Article 191 the phrase "subject to law" means subject to statutory law, i.e., the law made by the legislature. The term "law" wherever used in the Constitution does include the statutory law. So, one thing is clear and certain: the phrase "subject to law" in

Article 191 of the Constitution at least means that the court in making rules of its practice and procedure acts subject to statutory law.

ii) Once it is conceded that the word “law” as used in Article 191 of the Constitution means, or at least includes, "statutory law", the bars are down; because if it means statutory law in any sense it means statutory law in all senses, substantive and procedural. The Constitution, in this regard, makes no limitation either expressly or by necessary implication by adding some adjectival distinction. If our effort is to find the actual meaning which the words, as written in the Constitution, were intended to convey, and not any preconceived meaning, any implicit limitation with the word "law" in the phrase "subject to law" cannot be justified. I, therefore, do not subscribe to the view that the phrase "subject to law" as used in Article 191 means subject to "substantive law” only. The word “law” includes law in all senses - procedural and substantive; enacted directly on the matter of practice and procedure of the Supreme Court or containing only incidental or ancillary provisions.

iii) The power to deal with the subject of rules regulating its practice and procedure, no doubt, primarily vests in the Supreme Court but this is not exclusive to it. This rule-making power of the Supreme Court is subservient to the superior constituent power and ordinary legislative power of the Legislature. The rules made by the Supreme Court are to hold the field unless changed by the Legislature in the exercise of its constituent power under Article 238 or its legislative power under Article 142 of the Constitution.

iv) If a High Court, in the exercise of its rule-making power, provides that a petition filed under Article 199 of the Constitution shall be heard by a Bench of three Judges, no one can dispute that such power of the High Court relates to its practice and procedure; likewise if a High Court by its rules provides that such a petition shall be first heard by a Single Bench and then by a Division Bench in intra-court appeal, there can be no justifiable reason to deny that such exercise of its rule-making power also relates to the practice and procedure of the High Court. By the latter procedure, the High Court saves the time and labour of two of its Judges, to be utilized in dealing with other cases; for the Single Bench hears, discusses and decides the matter agitated in the petition and the work of the Division Bench lessens in intra-court appeal to only see whether there is any error in the judgment of the Single Bench and to correct the same, if any.

v) A bare reading of this entry shows that the matter of “enlargement of the jurisdiction of the Supreme Court” falls within the legislative competence of Parliament. By conferring intra-court appellate jurisdiction, Section 5 of the Act has exactly done this: it has enlarged the appellate jurisdiction of the Supreme Court. There is no constraint in the said entry as to the enlargement of the jurisdiction of the Supreme Court and the conferring thereon of supplemental powers. The only limitation is that Parliament cannot curtail the jurisdiction of the Supreme Court.

vi) A legislature that is competent to make a law also has the power to legislate it retrospectively and can by legislative fiat even take away vested rights or affect

past and closed transactions. When the legislature gives retrospective operation to the law enacted, the party affected thereby cannot plead infringement of his rights as a ground for declaring the law invalid. Our Constitution only bars retrospective legislation on criminal liabilities, not on civil rights and obligations.

vii) It is by now well-accepted that in case of doubt or difficulty in ascribing proper meaning to a provision or a word in a provision of law, the Statement of Objects and Reasons in the Bill introduced for the enactment of that law may also be looked into, to ascertain the intention of the Legislature.

viii) The ratio of the judgment passed by a five-member Bench of this Court in SMC No.4/2021 as partially modified by Section 3 of the Act is that now the Committee comprising the Chief Justice and two most senior Judges is the sole authority by and through which the jurisdiction of this Court under Article 184(3) of the Constitution can be invoked suo motu; no Judge or Bench of this Court can do so. This is the law of the land to date; it must be applied and complied with in letter and spirit. The Benches of this Court hearing the petitions filed under Article 184(3) of the Constitution should, therefore, as a first step in the proceedings ask the petitioner to show how he has an interest in the matter agitated in the petition. If he fails to do so, the petition should be referred to the Committee to decide upon the question of whether or not it finds appropriate to invoke the jurisdiction of the Court suo motu in the matter agitated in the petition.

Conclusion: i) Yes, phrase “subject to law” used in Article 191 of Constitution means only statutory law.

ii) No, the phrase "subject to law" as used in Article 191 does not mean subject to "substantive law” only. The word “law” includes law in all senses - procedural and substantive; enacted directly on the matter of practice and procedure of the Supreme Court or containing only incidental or ancillary provisions.

iii) The power to deal with the subject of rules regulating its practice and procedure, no doubt, primarily vests in the Supreme Court but this is not exclusive to it. This rule-making power of the Supreme Court is subservient to the superior constituent power and ordinary legislative power of the Legislature.

iv) Yes, High Court in the exercise of its rule-making power can provide for constitution of benches for hearing appeals etc.

v) There is no constraint in entry 55 of Federal Legislative list with respect to enlargement of the jurisdiction of the Supreme Court and Parliament cannot curtail the jurisdiction of the Supreme Court.

vi) A legislature that is competent to make a law also has the power to legislate it retrospectively and can by legislative fiat even take away vested rights or affect past and closed transactions.

vii) See above in analysis no. vii.

viii) See above in analysis no. viii.

2. **Supreme Court of Pakistan**
Reference by the President of Islamic Republic of Pakistan under Article 186 of the Constitution
Reference No. 1 of 2011
Mr. Justice Qazi Faez Isa, CJ, Mr. Justice Sardar Tariq Masood, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/reference_1_2011_06mar2024.pdf

Facts: In this reference, the question of law, in essence, is whether the requirements of due process and fair trial were complied with in the murder trial of Mr. Zulfiqar Ali Bhutto ("Mr. Bhutto"), the former Prime Minister of Pakistan, by the trial court (the Lahore High Court) and the appellate court (the Supreme Court).

Issues: i) What is advisory jurisdiction of Supreme Court under Article 186 of Constitution?
ii) Whether the decision of the Lahore High Court as well as the Supreme Court of Pakistan in the murder trial against Shaheed Zulfiqar Ali Bhutto meets the requirements of fundamental rights as guaranteed under Article 4, sub-Articles (1) and (2)(a), Article 8, Article 9, Article 10A/due process, Article 14, Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973? If it does not, its effect and consequences?
iii) Whether the conviction leading to execution of Shaheed Zulfiqar Ali Bhutto could be termed as a decision of the Supreme Court binding on all other courts being based upon or enunciating the principle of law in terms of Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973? If not, its effect and consequences?

Analysis: i) The advisory jurisdiction, under Article 186 of the Constitution, requires Supreme Court to render an opinion on any question of law of public importance referred to by the President.
ii) The proceedings of the trial by the Lahore High Court and of the appeal by the Supreme Court of Pakistan do not meet the requirements of the Fundamental Right to a fair trial and due process enshrined in Articles 4 and 9 of the Constitution and later guaranteed as a separate and independent Fundamental Right under Article 10A of the Constitution. The Constitution and the law do not provide a mechanism to set aside the judgment whereby Mr. Bhutto was convicted and sentenced; the said judgment attained finality after the dismissal of the review petition by this Court.
iii) Referenced questions do not specify the principle of law enunciated by this Court in the Zulfiqar Ali Bhutto case regarding which our opinion is sought. Therefore, it cannot be answered whether any principle of law enunciated in the Zulfiqar Ali Bhutto case has already been dissented to or overruled.

Conclusion: i) The advisory jurisdiction, under Article 186 of the Constitution, requires Supreme Court to render an opinion on any question of law of public importance referred to by the President.
ii) See above in analysis no. ii.
iii) See above in analysis no. iii.

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3. **Supreme Court of Pakistan**
Taufiq Asif v. General (Retd.) Pervez Musharraf and others. And three other petitions
Civil Petition No. 3797, 3798, 3799 and 3800 of 2020
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3797_2020.pdf

Facts: The Special Court (under Section 5 of the Criminal Law Amendment (Special Court) Act, 1976) proceeded with the trial and reserved its judgment. The said order was challenged by the respondent before the High Court through a writ petition under Article 199 of the Constitution. While the matter was being heard by the High Court, the Special Court announced its judgment convicting the respondent and sentencing him to death. However, the High Court ignored the judgment of the Special Court and decided the writ petition by allowing it. Hence, the instant petitions for leave to appeal have been filed.

Issues: i) Whether any High Court can assume and exercise writ jurisdiction on the pretext that one of the reliefs sought relates to an act of a federal body when ultimate relief sought relates to an act done or proceeding taken within the territorial jurisdiction of another High Court?
ii) Whether writ jurisdiction of High Court can be invoked while having an alternate equally efficacious and adequate remedy provided under the law?
iii) Whether High Court can give decision on merit in writ jurisdiction when it is exclusively vested in Supreme Court in appellate jurisdiction?
iv) Whether High Court can grant relief which is not sought in writ petition and determine the merit of the case?
v) Whether Special Court is mandated to proceed with the trial after taking the necessary steps to appoint an advocate to defend an accused person in his absence?
vi) Whether principle settled in Mustafa Impex case have retrospective application?
vii) Whether judgments of Supreme Court are binding on all judicial and executive authorities of the country?

Analysis: i) The Lahore High Court assumed territorial jurisdiction in the matter, stating the reason that since the respondent also challenged, along with the acts and proceedings of the Special Court, the Federal Government's acts, i.e., the acts of filing the complaint and constituting the Special Court, it had the jurisdiction to adjudicate upon the matter. The reason is flawed and is also against the law

declared by this Court in Sandalbar and Amin Textile as well as by the Lahore High Court in Sethi and Sethi. The ratio of these cases is that it is the dominant object of the petition, i.e., the main grievance agitated and the ultimate relief sought in the petition, which determines the territorial jurisdiction of the High Courts. If the ultimate relief sought relates to an act done or proceeding taken within the territorial jurisdiction of a particular High Court, no other High Court in the country can assume and exercise writ jurisdiction on the pretext that one of the reliefs sought relates to an act of a federal body. The splitting of claims and reliefs in several actions (suits or petitions) regarding one cause of action is also not legally permissible under Order II, Rule 2, CPC. No person can, therefore, seek relief regarding an act of a federal body from one High Court and relief regarding an act done in furtherance of or pursuance to that act from another High Court. Both reliefs must be sought in one petition and adjudicated by the High Court which has territorial jurisdiction over both acts.

ii) The next challenge, made before us, on the exercise of jurisdiction by the High Court is that the respondent had an alternate adequate remedy under the law; therefore, the High Court should have kept its hands off the matter and should not have proceeded to exercise the writ jurisdiction under Article 199 of the Constitution… Where an adequate remedy is available under the relevant law, this Court has strictly deprecated circumventing that remedy and invoking the writ jurisdiction of the High Court under Article 199 of the Constitution. The writ jurisdiction of the High Court cannot be exploited while having an alternate equally efficacious and adequate remedy provided under the law; such remedy cannot be bypassed to attract the writ jurisdiction. The doctrine of exhaustion of remedies accentuates that a litigant must not circumvent or bypass the provisions of the relevant law that provide for an adequate remedy. If a party does not choose the remedy available under the law, the writ jurisdiction of the High Court cannot be invoked and exercised in his favour. Where a matter arises under a statute and is adjudicated by a forum provided therein, and the said statute also provides a remedy of appeal or revision either in the High Court itself or directly before this Court, the High Court should not in its writ jurisdiction interfere with such matter. We therefore hold that the remedy of appeal provided before this Court by Section 12(3) of the Special Court Act against the judgment of the Special Court was an alternate, adequate and efficacious remedy… Therefore, in view of the availability of an adequate remedy of appeal before this Court, the High Court could not have exercised its writ jurisdiction under Article 199 of the Constitution, arrogating to itself the appellate jurisdiction vested in this Court under Section 12(3) of the Special Court Act.

iii) Not only did the High Court assume jurisdiction not vested in it but it also dilated upon the merits of the matter, which it could not do as the High Court was not the appellate forum. The High Court, without enjoying any jurisdiction whatsoever, gave its own findings on the core subject matter of the trial, i.e., whether the respondent had committed the offence of high treason under Article 6 of the Constitution read with Section 2 of the High Treason Act. By doing this the

High Court unlawfully assumed the appellate jurisdiction exclusively vested in the Supreme Court under Section 12(3) of the Special Court Act.

iv) We have noted that the High Court had also granted relief which was not even sought in the writ petition. The relief sought in the prayer clause of the writ petition, as noted above, mainly challenged the order of the Special Court whereby it had reserved its judgment. No prayer was made to seek a determination as to whether the respondent had committed the offence of high treason. However, the High Court overstretched its jurisdiction by proceeding to determine the core question of whether the respondent had committed the offence of high treason, and then held that the actions of the respondent were not part of Article 6 at the time of the commission of the said actions. The High Court not only assumed the exclusive jurisdiction of the Special Court which was to determine whether the respondent had committed the offence of high treason but also usurped the appellate jurisdiction of the Supreme Court. The High Court should have remained within the confines of the dispute brought before it and decided the same in accordance with the law and the Constitution.

v) The High Court also declared the entire Section 9 of the Special Court Act as ultra vires the Constitution, even though the respondent had only challenged its 'offending portion' to the extent it provides that "no trial shall be adjourned by reason of the absence of any accused person due to illness". Section 9 of the Special Court Act expressly restricts granting adjournments during the proceedings of such trial, undoubtedly because of the seriousness of the offence of high treason… A plain reading of Section 9 shows that it deals with the absence of the accused person not only due to his illness but also where the absence of the accused person or his counsel has been brought about by the accused person himself, or where the behaviour of the accused person prior to such absence has been such as to impede the course of justice. In such cases, the Special Court is mandated to proceed with the trial after taking the necessary steps to appoint an advocate to defend such an accused person.

vi) It was observed in the impugned judgment that the Secretary Interior, in his capacity as the officer authorized by the Federal Government vide SRO 1234(I)/94 dated 29.12.1994 under Section 3 of the High Treason Act, can only file a complaint for high treason on the recommendations of the Federal Government, and under Section 3 of the Special Court Act it is the Federal Government that constitutes the Special Court. The whole exercise was then set aside by declaring it as illegal, unconstitutional and void ab initio on the ground that the said actions were taken by the Prime Minister, not by the Federal government, and therefore, were not conducted in accordance with the principle laid down in Mustafa Impex. The High Court, however, did not consider the decision of this Court rendered in PMDC, which had held that the principle settled in Mustafa Impex did not have retrospective application, and applies only from the date of its pronouncement, i.e., 18.06.2016.

vii) Failing to adhere to the judgments and orders of the Supreme Court undermines the credibility and effectiveness of the entire judicial system

established by the Constitution. Judgments of this Court being binding on all judicial and executive authorities of the country is a constitutional obligation under Articles 189 and 190 of the Constitution. This obligation reflects a fundamental commitment to preserving the integrity and sanctity of the Supreme Court. Disregard of the abovementioned judgments and orders by the Lahore High Court amounts to judicial effrontery and impropriety.

Conclusion: i) Any High Court cannot assume and exercise writ jurisdiction on the pretext that one of the reliefs sought relates to an act of a federal body when ultimate relief sought relates to an act done or proceeding taken within the territorial jurisdiction of another High Court.
ii) Writ jurisdiction of High Court cannot be invoked while having an alternate equally efficacious and adequate remedy provided under the law.
iii) High Court cannot give decision on merit in writ jurisdiction when it is exclusively vested in Supreme Court in appellate jurisdiction.
iv) High Court cannot grant relief which is not sought in writ petition and determine the merit of the case.
v) Special Court is mandated to proceed with the trial after taking the necessary steps to appoint an advocate to defend an accused person in his absence.
vi) The principle settled in Mustafa Impex does not have retrospective application, and applies only from the date of its pronouncement, i.e., 18.06.2016.
vii) Judgments of Supreme Court being binding on all judicial and executive authorities of the country is a constitutional obligation under Articles 189 and 190 of the Constitution.

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4. **Supreme Court of Pakistan**
Chief Commissioner/Commissioner IR Zone-II/Zone-III, RTO, Peshawar v. M/s Akbar Khan Filling Station
Appeals no. 1314 to 1337of 2014 & Civil Appeals no. 1611 to 1624 of 2013
Mr. Justice Sardar Tariq Masood, ACJ, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1314_2014.pdf

Facts: The respondents filed applications for refund of the amount deducted as tax u/s 156A of the Ordinance of 2001. The applications, filed u/s 170 of the Ordinance of 2001, were dismissed by the taxation officer. The appeals preferred by the respondents u/s 129 were allowed by the Commissioner Inland Revenue (Appeals). The department challenged the orders but the appeals were dismissed by the Appellate Tribunal Inland Revenue. The High Court answered the question of law against the department in response to the questions proposed in the references filed u/s 133 of Ordinance of 2001.

Issues: i) Whether provisions of Income Tax Ordinance 2011 are applicable on income arising in territorial jurisdiction of FATA?
ii) Whether the obligation of deduction of tax is on the person selling the petroleum products to the operator of the petrol pump while the said deduction is

relatable to the commission paid to or discount allowed by the latter?
iii) Whether immunity from payment of taxation under the Income Tax Ordinance 2001 can be claimed merely on the basis that business premises have been established in FATA?

Analysis: i) The enforcement of the Ordinance of 2001 was not extended to the territorial limits of FATA and, therefore, its provisions were not attracted to the income arising therein.
ii) Section 156A of the Ordinance of 2001 provides that every person selling petroleum products to a petrol pump operator shall deduct tax from the amount of commission or discount allowed to the operator at the rate specified in Division VIA of Part III of the first Schedule. The tax deductible under section 1 shall be a final tax on the income arising from the sale of petroleum products. It is to be noted that the obligation of deduction of tax is on the person selling the petroleum products to the operator of the petrol pump while the said deduction is relatable to the commission paid to or discount allowed by the latter.
iii) The factum of income having been accrued was on account of the commission paid to the respondents for the sale of petroleum and not the sale of the petroleum products to the consumer at the petrol pumps operated in FATA. As already noted, the deduction of tax fell under the final tax regime. Admittedly, the contractual arrangement for the sale of petroleum products, the actual sale and payment as well as deduction of the tax had taken effect in the areas of Pakistan outside the territorial limits of FATA and, therefore, the transactions and the income arising from such sale were not immune from the enforcement of Ordinance of 2001. The income derived by the respondents was on account of commission paid to them by seller companies outside FATA. Supreme Court has already held that immunity from the payment of taxation under the Ordinance of 2001 shall not be claimed merely on the basis that the business premises have been established in FATA, rather the onus was on tax payer to establish the fact that taxable income was not being derived from the area where the statute was enforced and applicable.

Conclusion: i) The enforcement of the Ordinance of 2001 was not extended to the territorial limits of FATA and, therefore, its provisions were not attracted to the income arising therein.
ii) Yes, the obligation of deduction of tax is on the person selling the petroleum products to the operator of the petrol pump while the said deduction is relatable to the commission paid to or discount allowed by the latter.
iii) The immunity from the payment of taxation under the Ordinance of 2001 shall not be claimed merely on the basis that the business premises have been established in FATA, rather the onus was on tax payer to establish the fact that taxable income was not being derived from the area where the statute was enforced and applicable.

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5. **Supreme Court of Pakistan**
Government of Balochistan through Secretary Mines and Minerals Department and another v. Attock Cement Pakistan Limited D.G Khan Cement Company Limited
Civil Petitions No.167-Q and 168-Q of 2023
Mr. Justice Munib Akhtar, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Shahid Waheed.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._167_q_2023.pdf

Facts: Through these petitions filed under Article 185(3) of the Constitution of Islamic Republic of Pakistan,1973,the petitioners have called in question the Judgment of the High Court of Balochistan partly allowing the Constitutional Petitions of the respondents filed for challenging the notification aimed at revising and enhancing the rates of application fee relating to mineral titles & mineral concessions, rates of annual rentals and the royalties mentioned in the Balochistan Mineral Rules, 2002.

Issue: Whether a notification having received ex-post facto approval by the cabinet can have a retrospective applicability?

Analysis: Section 2 read with Section 6 of the Regulations of Mines and Oil Fields and Mineral Development (Government Control) Act, 1948 authorizes the appropriate Government to frame rules regarding, *interalia*, determination of the rates at which royalties, rents and taxes shall be payable, among various other matters. Further, Rule 102(1) of the consequently framed Rules of 2002 provides that the royalties shall be charged at such rates as may be notified by the Government from time to time. The notification takes effect from the date of authentication/approval by the cabinet. This interpretation aligns with the principle that if the provincial cabinet provides ex-post facto approval, the validity of the notification is recognized from that date of approval and cannot be applied retrospectively. Hence, the legal validity of the ex-post facto approval of the notifications by the Cabinet cannot be considered valid under the law.

Conclusion: A notification having received ex-post facto approval of the provincial cabinet, cannot have a retrospective applicability.

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6. **Supreme Court of Pakistan**
Chairman, Board of Control, Canteen Stores, HQ, Rawalpindi & others v. Muhammad Azam Khan & others
Civil Appeal No.515 of 2015
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._515_2015.pdf

Facts: This is an appeal by leave from the judgment of the High Court, whereby the intra-court appeal filed by the appellants against the order passed by the Single Bench in favour of the respondents was dismissed.

Issues: i) What is the current status of CSD (*Canteen Stores Department*)?
ii) Whether CSD was declared a part of the Armed Forces and its employees were treated as Government servants or members of the Armed Forces?
iii) Whether the employees of CSD are in the service of the Armed Forces and, therefore, the High Court cannot make an order concerning them?
iv) Whether the CSD comes within the fold of "person" defined under clause (5) of Article 199 of the Constitution?
v) Whether CSD can be construed as an authority of or under the control of the Federal Government?

Analysis: i) Here ends an overview of CSD conveying that currently, CSD is a non-Governmental commercial organization, its services are connected with the defence, it has its own funds, its post holders are not in the service of Pakistan, and it is supervised by a Board of Control with the Quarter Master General as its Chairman.
ii) This aspect of the purposes of CSD clearly makes it out to be an organization connected with the Armed Forces'. It is important to clarify here that in this judgment, the CSD, was treated as an organisation providing services related to the Armed Forces. However, CSD was not declared a part of the Armed Forces, nor were its employees treated as Government servants or members of the Armed Forces.
iii) Here, we deem it expedient to clear the misconception often arising from Instruction No. 38 of the Army Regulations, Vol-II (Instructions), 2000, page 19. The impression that detracts is that since, in this instruction, the Quartermaster General's Branch is shown to be dealing with the CSD, it should be considered a part of the Armed Forces. This is not well founded, for all that this instruction means is that the Quartermaster General's Branch shall deal with matters about policy, control and administration of CSD. This does not imply that the CSD has become a part of the Quartermaster General's Branch and so, CSD can only be considered an organisation that provides services connected with the Armed Forces, and its employees cannot be treated as Government Servants or Armed Forces members. Consequently, in light of this analysis, it can be safely concluded that concerning the terms and conditions of its employees, the CSD cannot put forward the bar contained in clause (3) of Article 199 of the Constitution before the High Court.
iv) Now, we have reached the stage to examine whether the CSD comes within the fold of "person" defined under clause (5) of Article 199 of the Constitution. Before proceeding further, we take a pause and consider it pertinent to reiterate that under Article 199(5) person includes any body politic or corporate, and any authority of or under the control of Federal Government or of Provincial Government. In that vein, it is to be first ascertained whether CSD could be treated as a body politic or corporate. It may be observed that under the Anglo-Saxon Law, there are two main classes of corporations: Corporations sole and Corporations aggregate. A corporation sole is a body politic having perpetual succession constituted in a single person like a sovereign or some Ministers of the

Crown, Government officers or an archbishop, dean, a vicar, etc., who have been created as Corporation sole by name under the relevant statute but this is not a common type of corporation. The Corporation aggregate is more common contemporary. The method of their incorporation in Britain is either by a Royal Charter or by the authority of the Parliament, that is, by or by virtue of statute. In Pakistan, corporations are incorporated either by a statute or by registration of companies under the statute such as Companies Act, associations under the Societies Act, cooperative societies under the Cooperative Societies Act, or trusts under the Trust Act. It is also common for corporations to be created by an executive order under the authority delegated by an Act of Parliament.9 In light of this perspective, we cannot say that CSD is a body politic or corporate because the historical perspective and the precedents set out above tells us that it has not come into being by a statute or under a statute.

v) Could we then construe CSD as an authority of or under the control of the Federal Government? It is now well settled that to be such an authority, it must be entrusted with functions of the government involving some exercise of sovereign or public power, and it must also be legally entitled to, or entrusted by the Government with, the control or management of a local fund. In the case of CSD, we find that its entire capital belongs to it and does not form part of the government money or government funds. It has independent financial resources and is run by its own funds, receives no funds from any source of the Government and is completely autonomous in its internal administration. The Public Accounts Committee does not scrutinise its accounts to include the same in the Public Fund Account of the Federal Government. It is a private commercial organization and does not perform any function of the Government. All these features are also borne out from letter No. 5503/119/Q-Coord./646-Q/D-3 dated 21st of February, 1959 (reproduced hereinabove), in which it has categorically been stated that neither the transactions of CSD will pass through Government accounts nor will its trade results be exhibited in the Commercial Appendices of the Defence Services. That apart, the Ministry of Finance, Government of Pakistan, in its letter No.2611/EIII/ FAMF/67 dated 22nd of June, 1967, has also clarified that the revenue of the CSD is not administered by a body which, by law or rule, having the force of law come under the control of the Government nor the revenue are ever notified by Government as

such. For these reasons, the CSD also cannot be held as an authority of the Government.

Conclusion: i) See above in analysis clause no. i.

ii) CSD was not declared a part of the Armed Forces, nor were its employees treated as Government servants or members of the Armed Forces.

iii) CSD can only be considered an organisation that provides services connected with the Armed Forces, and its employees cannot be treated as Government Servants or Armed Forces members and CSD cannot put forward the bar contained in clause (3) of Article 199 of the Constitution before the High Court.

iv) CSD is not a body politic or corporate because the historical perspective and the precedents tells that it has not come into being by a statute or under a statute.
v) CSD cannot be held as an authority of the Government.

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7. **Supreme Court of Pakistan**
Rehm Dad v. Province of Punjab through its Chief Secretary, Lahore & others.
Civil Petition No. 1857 of 2022, C.M.A. No. 3899 OF 2022 & C.M.A. No. 1032 of 2023 in C.P. 1857 of 2022.
Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1857_2022.pdf

Facts: This Civil Petition is directed against judgment passed by the Lahore High Court, whereby the Intra Court Appeal filed by the Petitioner was dismissed.

Issues: i) What is the interpretation of proviso to Section 3(2) of the Law Reforms Ordinance, 1972 and the term "original order" and "proceedings"?
ii) Whether the rules framed under the relevant statute are an integral part of the parent act?
iii) What is the scope of sections 18 and 54 of the Land Acquisition Act, 1894?

Analysis: i) Section 3(2) of the LRO has been subject to judicial scrutiny and interpretation. The essential requirement to invoke the proviso to Section 3(2) of the LRO is to see whether the right of at least one appeal, revision or review is available to the original order in a proceeding where the relevant law is applicable (2023 SCP 362). Terms original order and proceedings in the said proviso have been interpreted by Supreme Court in Karim Bibi (PLD 1984 SC 344), which declares the significance of the original order and the law applicable to the original order…In relation to the applicability of the law, the determining factor, as held in Karim Bibi, is the order with which the proceedings under the relevant statute commenced (PLD 1985 SC 107). Karim Bibi gives meaning to the phrase original order with respect to the concerned law under which the legal proceeding has been initiated or commenced. Hence, in terms of the proviso to Section 3(2) of the LRO and ruling in Karim Bibi, the settled principle is that the law applicable shall be the law by which the proceeding started or commenced, which forms the basis of the original order (…)
ii) It is established law that the rules framed under the relevant statute are an integral part of the parent act (2020 SCMR 631). If the very existence of rules is based on legislation, then it shall be the said statute, including its rules, which will be the law applicable to proceedings within the meaning of the proviso to Section 3(2) of the LRO (2021 SCMR 1617).
iii) Section 18 of the LAA is the reference to the court against the award of the collector. Essentially, an interested party, who has not accepted the award of the Collector, may request the matter to be referred for the determination of the Referee Court specifically in relation to objections as to the measurement of the

land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested. The scope of Section 18 of the LAA is very limited and restricted towards the subject-matter of measurement and compensation of land…Moreover, the appeal under Section 54 of the LAA lies before the High Court from the award, or from any part of the award. Meaning thereby the appeal can only be filed before the High Court after the decision of the Referee Court (PLD 2007 SC 620). When the petitioner has not raised objections before the Referee Court under Section 18 of the LAA so he cannot seek the remedy of appeal under Section 54 of the LAA. Therefore, no right of appeal was available to the petitioner in terms of Section 54 of the LAA (…)

Conclusion: i) See above in analysis clause no. i.
ii) Yes, the rules framed under the relevant statute are an integral part of the parent act.
iii) See above in analysis clause no. iii.

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8. **Supreme Court of Pakistan**
Federation of Pakistan through the Secretary, Ministry of Law and Justice, Islamabad & Afiya Shehrbano Zia and others v. Supreme Judicial Council through its Secretary, Supreme Court Building, Islamabad and others
ICA No.1 and 2/2024 in Constitutional Petition No.19/2020
Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/i.c.a._1_2024_15032024.pdf

Facts: Appeals were filed under section 5 of the Supreme Court (Practice & Procedure) Act, 2023 read with Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973 ('the Constitution'), whereby appellants challenged the judgment passed by the learned two-member bench of this Court in Constitution Petition No. 19 of 2020 filed under Article 184(3) of the Constitution by the appellants of ICA No. 2 of 2024 which was dismissed *in limine*.

Issue: Whether Article 209 envisages that by resignation of a Judge or retirement on superannuation the proceedings which are pending before the SJC will automatically come to end or it is the prerogative of the SJC to proceed with the matter?

Analysis: At the time of hearing of petition filed by the appellants of ICA No. 2 of 2024, the Judge had already been retired against whom complaints filed by the said appellants were pressed, though the complaint was filed against the Judge when he was a Chief Justice but unfortunately the complaint could not be placed before the SJC and after the retirement of said Judge when it was placed before the SJC same was dismissed as having become infructuous. The main consideration before the learned two member Bench of this Court while

hearing the Constitution Petition was that the SJC has declared the complaint as having become infructuous, therefore, mainly the emphasis of the Court was upon the said point whereas it was not a case before the Court that after considering the complaint some steps were taken in the complaint i.e. issuance of notice to the Judge against whom complaint was filed or any reply or the response to the complaint, not it was the question before the Court that during the pendency of the complaint after issuance of notice by the SJC the effect of retirement of a Judge or resignation but the effect of the impugned judgment is that even if the complaint is pending after taking cognizance by the SJC, it abates on retirement of a Judge or resignation, therefore, Federal Government was aggrieved and filed the instant appeal, on which point we agree with the appellant…. it is the prerogative of the SJC to proceed with the matter and the proceedings pending before the SJC which are initiated after issuance of notice to a Judge do not automatically drop or become infructuous on superannuation or resignation of a Judge.

Conclusion: Article 209 envisages that by resignation of a Judge or retirement on superannuation the proceedings which are pending before the SJC will not automatically come to end and it is the prerogative of the SJC to proceed with the matter.

Additional Note

Issues: i) Whether limitation can be condoned where a question of public importance relating to interpretation of Constitution is involved specially when no notice was given to the Attorney General for Pakistan as required by Order XXVII-A Rule 1 CPC?

ii) Whether the Council can inquire into the capacity or conduct of a judge, who has retired or has resigned from his office?

iii) Whether the Council can continue to inquire into the conduct or capacity of a judge, who during the pendency of the inquiry proceedings, retires or resigns from his office?

Analysis: i) It is a fact that the petition under Article 184(3) of the Constitution was filed by the private appellants, but the Federal Government was not arrayed as party to the proceedings. Through the said petition, interpretation of Article 209 of the Constitution was required, therefore, it was mandatory for the Court to have had issued a notice to the Attorney General for Pakistan ("**AG**") as required by Order XXVII-A Rule 1 CPC….Since neither the Federal Government was arrayed as party to the proceedings nor mandatory notice required under Order XXVII-A Rule 1 CPC was issued to the AG, therefore, there is no reason to disbelieve his contention regarding his unawareness of the date of the pronouncement of the impugned judgment. Even otherwise, a Ten Member Bench of this Court through the referred judgment [Federal Govt. of Pakistan vs. M.D.Tahir Adovcate] has

condoned the delay of 257 days in filing of petition solely on the ground of public importance…

ii) A plain reading of the said provision [Article 209(5)] of the Constitution makes it clear that the Constitution has mandated the President that on information from any source, he shall direct the Council to inquire into the matter. The phrase, '*the President Shall direct the Council'* used in this provision of the Constitution makes it mandatory upon the Council that it has no option, but to initiate inquiry against the judge accordingly in a case the reference is received from the president. Similarly, if the Council deems it appropriate, may on its own motion inquire into the matter. After a preliminary inquiry, the Council may dismiss the complaint for lack of evidence or untrue information. In both circumstances, once the Council invokes its Constitutional jurisdiction by initiating inquiry into the matter against a judge, it has to take the proceedings to its logical conclusion…. In any case, it was necessary for the Council to have decided the fate of the complaint before retirement of the former HCJ, but the needful was not done, therefore, after his retirement, the Council cannot proceed.

iii) As a general rule, the Authority inquiring into the conduct of a judge loses its jurisdiction to initiate proceedings against a person who retires or resigns from his office, before initiation of inquiry proceedings. Whereas, when an inquiry about the conduct of a judge in office is initiated by the Council, it is the Constitutional obligation of the Council to conclude the proceedings, form its opinion and report to the President with recommendations. In this provision of the Constitution, the word 'inquiry' has been used. The primary purpose of inquiry is to gather information in order to address a specific issue of public interest and to make recommendations for improvement and prevention of future occurrences. It is not to focus on enforcing laws or prosecuting individuals as is mandated in investigation, rather to inquire into the ethical violations and misconduct of a judge. It promotes accountability and trust in the process by the public….When an inquiry into conduct of a judge initiated by the Council is terminated without an opinion, on account of retirement or resignation of a judge from his office, it would render Article 209 (5) & (6) of the Constitution redundant and would also give an authority to the judge to make the Constitutional body abandoned….Termination of inquiry proceedings upon retirement of a judge would otherwise give an impression that the Council is dependent on the will of the judge, who can overpower the control of the Constitutional body. It may create a perception that the judges are above the law. After his retirement or resignation, prior to inquiry initiated, a judge enjoys a status of a retired judge, with lucrative post-retirement benefits from public ex- chequer. He is also eligible for his re-appointment against some important Constitutional, quasi-judicial and administrative posts, for which evaluation of his conduct and reputation is essential. The jurisdiction of the Council to inquire into the matter pertaining to misconduct of a judge is a Constitutional mandate. In absence of express words or an enactment, preventing the Council from inquiring into the matter upon resignation or retirement of a judge, jurisdiction of the Council cannot be

abolished, ousted or terminated. Since there is no express provision in the Constitution, nor is there any enactment, preventing the Council from continuing its proceedings of inquiry in a situation where a judge is retired or resigns before conclusion of the inquiry, it is the Constitutional obligation of the Council to conclude the inquiry initiated against a judge and form an opinion regarding his conduct. If after inquiring into the matter, the Council is of the opinion that the judge has been guilty of misconduct, under such circumstances, he shall not be eligible for post-retirement benefits…If the proceedings are made dependent upon the will of the judge on accountof his resignation, at any stage before conclusion of inquiry, it would let the judge, who is guilty of misconduct, to go Scott free by defeating the processof accountability. This would damage rule of law norms and public trust in the role of judges and the judiciary…For these reasons, it is imperative that once the Council in exercise of its Constitutional authority, initiates inquiry into conduct of a judge, it cannot terminate or abate upon retirement or resignation of the judge from his office. The citizens have a right to know about the outcome of the complaints.

Conclusion: i) Limitation can be condoned where a question of public importance relating to interpretation of Constitution is involved specially when no notice was given to the Attorney General for Pakistan as required by Order XXVII-A Rule 1 CPC.
ii) The Council cannot inquire into the capacity or conduct of a judge, who has retiredor has resigned from his office.
iii) The Council can continue to inquire into the conduct or capacity of a judge, who during the pendency of the inquiry proceedings, retires or resigns from his office.

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9. **Supreme Court of Pakistan**
Zain Shahid v. The State and another
Crl. Petition No. 29-K of 2022
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._29_k_2022.pdf

Facts: The Trial Court convicted and sentenced the petitioner under section 11-F(i) and 11-H(i)(ii) of the ATA of 1997, to suffer imprisonment. The petitioner filed an appeal before the High Court, which was dismissed through the impugned judgment, hence, this petition for leave to appeal.

Issues: i) What is the basic purpose of framing of charge in a criminal case?
ii) Where any particular section of law with which a person is intended to be charged contains several parts, what is the procedure of framing of such charge?
iii) What is the effect of not mentioning necessary ingredients of the offences in the framing of charge?
iv) What is the duty of informer in terms of Section 11-H of ATA, 1997 regarding suspicion of a person that he is dealing in the money or property for terrorist activity?

v) In absence of relevant information and evidence to *prima facie* constitute an offence, what is primary duty of Trial Court?
vi) Whether a spy information against an accused should be reduced into writing?

Analysis: i) Framing of charge is the foundation of trial, with a purpose and object to enable accused to know the exact nature of allegations and the offences with which he is charged, so that he is given reasonable opportunity to prepare his case and defend himself. Similarly, it enables the prosecution to produce relevant evidence in support of its case against the accused in order to prove the charge. Framing of proper charge is, therefore, significant for the court concerned to be cautious regarding the real points in issue, so that evidence could be confined to such points and to reach a correct conclusion.

ii) Section 221 of the Cr.P.C. has provided an elaborate procedure for framing of charge. It requires that all material particulars as to time, place, as well as specific name of the alleged offence, if any; the relevant law, its applicable section(s), sub-section(s) and clause(s) in respect of which the offence is said to have been committed, shall be mentioned in the charge. Where any particular section of law with which a person is intended to be charged contains several parts, the relevant part of that section which depicts from the police report and the material available on record, should be mentioned therein. It is the responsibility of the Trial Judge to take all necessary and possible steps to ensure compliance of law with regard to framing of proper and unambiguous charge. Steps should also be taken to explain the charge to the accused to a possible extent, enabling him to fully understand the nature of allegations against him.

iii) If necessary ingredients of the offences with which the accused is charged, are not mentioned in the charge, or it is framed in an incomplete, defective or vague manner, it might mislead the accused, which would be a failure of justice. It is, however, to be noted that every omission in a charge cannot be regarded as material illegality or irregularity, unless the accused is in fact misled by such error or omission and it has occasioned a failure of justice, as provided by section 225 of the Cr.P.C.

iv) …The requirement that there exists objectively assessed cause for suspicion focuses attention on what information the person had, suspecting that the money might be used for terrorist activities. Under such circumstances, the informer is under legal compulsion to disclose to the police regarding the intent or suspicion of a person that he is dealing in the money or property for terrorist activity, enabling the I.O. to collect evidence in support of the accusations and submit report under section 173 of Cr.P.C.

v) The FIR, the police report and the other material available on the record were insufficient for the Trial Court to frame charge against the petitioner under any of the clauses of section 11-H of the ATA of 1997, yet defective and vague charge was framed under the stated offences, without mentioning in detail the purported act of the petitioner, which constitutes an offence. This is a classic example of defective charge, which had misled the petitioner. In absence of relevant

information and evidence to *prima facie* constitute an offence, it was incumbent upon the Trial Court to have refrained itself from framing of charge against the petitioner.

vi) The case against the petitioner was initiated upon a spy information, but such information was not reduced into writing. Fair play demands that spy information should be reduced into writing in order to safeguard innocent persons against false implication.

Conclusion: i) See above in analysis clause no. i.

ii) Where any particular section of law with which a person is intended to be charged contains several parts, the relevant part of that section which depicts from the police report and the material available on record, should be mentioned therein.

iii) See above in analysis clause no. iii.

iv) The informer is under legal compulsion to disclose to the police regarding the intent or suspicion of a person that he is dealing in the money or property for terrorist activity, enabling the I.O. to collect evidence in support of the accusations and submit report under section 173 of Cr.P.C.

v) In absence of relevant information and evidence to *prima facie* constitute an offence, it is incumbent upon the Trial Court to refrain itself from framing of charge against the accused.

vi) Fair play demands that spy information should be reduced into writing in order to safeguard innocent persons against false implication.

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10. **Supreme Court of Pakistan**
Mumtaz Ali v. The State thr. Chairman NAB and Others.
C.M.A.501-K/ 2023 in C.A.85-K/ 2018
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._501_k_2023.pdf

Facts: The father of applicant in the main case was indicted by Accountability Court, for committing the offence of misappropriation of government ghaf (a) (iii) (iv) & (xii) of the National Accountability Ordinance, 1999 and his post-arrest bail was granted subject to the deposit of Rs.61,79,238/- and applicant being son of the appellant, had deposited Saving Certificates amounting to Rs.61,79,238/- before the Officer In -charge at the Branch Registry of this Court in Karachi in compliance with the order. As, the Accountability Court convicted the appellant; therefore, the applicant has prayed for the discharge of the alleged surety and further contended that the amount of fine may be recovered by the NAB under the Land Revenue Act.

Issues: i) When bail is granted subject to the deposit of fine amount, whether on conviction with the same amount of fine, appellant/convict can claim back that amount?

ii) Whether provision of Section 33 -E of the NAO, 1999 is controlled by or subject to the provision of Section 70 of PPC?

iii) Whether by undergoing a sentence of imprisonment in default of payment of fine a convict is absolved of his liability to pay fine?

Analysis: i) It is evident from aforementioned bail order that the appellant's counsel, on instructions, conveyed that the appellant voluntarily proposed and was ready to deposit the entire amount of his liability and not as surety. On this offer, the DPG extended his no objection, following the dictum laid down in the case of Shamraiz Khan vs. The State (2000 SCMR 157). The post-arrest bail was granted subject to depositing the entire liability with the Assistant Registrar of this Court at the Branch Registry, Karachi. The learned counsel for the applicant argued that if the NAB wants to recover the fine money, it should invoke Section 33-E of the NAO, 1999, which provides that any fine or other sum due under this Ordinance, or as determined to be due by a Court, shall be recoverable as arrears of land revenue. In fact, it is a well-settled exposition of law that each case has to be decided on its own peculiar facts and circumstances. The appellant tendered the amount in lieu of availing the discretionary relief of bail and the same liability/fine was fixed against him in the NAB Court affirmed by the High Court. Had the appellant been acquitted by the High Court in appeal, he could have asked for the refund or release of the full amount deposited by him. However, the High Court maintained the conviction to the extent of the already undergone sentence without upsetting or affecting the quantum of the fine imposed upon the appellant by the NAB Court.

ii) The learned counsel for the applicant referred to the case State and others vs. Muhammad Kaleem Bhatti and others (PLJ 2020 SC (Cr.C.) 225), in which the point in issue before this Court was whether by virtue of the provisions of Section 70, Pakistan Penal Code, 1860 ("PPC") the amount of fine imposed upon a convict can be recovered after a period of six years after passage of the sentence or fine or not. This Court held that in Section 33-E of the National Accountability Ordinance, 1999 it has categorically been provided that a fine imposed upon a convict is to be recovered by way of arrears of land revenue and the said provision is not controlled by or subject to the provisions of Section 70, PPC. It was further held that the High Court had misdirected itself upon the law and had relied upon the provisions of Section 70, PPC without appreciating that the provisions of the National Accountability Ordinance, 1999 were to prevail in the matter as that was the special law catering for the situation at hand. Finally, this Court set aside the judgments passed by the High Court and clarified that by undergoing a sentence of imprisonment in default of payment of fine a convict is not absolved of his liability to pay fine and the amount of fine can still be recovered from him despite undergoing the sentence of imprisonment in default

of payment of fine because a sentence of imprisonment in default of payment of fine is only a punishment for non-payment of fine and is not a substitute for the sentence of fine.

iii) The sentence of imprisonment in default of payment of fine does not absolve the liability to pay fine and such amount of fine can be recovered despite undergoing the sentence in default of fine for the reason that imprisonment in default of payment of fine is only a punishment for non-payment of fine and is not a substitute for the sentence of fine.

Conclusions: i) When Post-arrest bail is granted by the Court on voluntary deposit of misappropriated amount as liability and not as a surety which is also imposed as fine on conviction by the NAB Court, the application for the withdrawal of surety would be misconceived and injudicious.

ii) Section 33-E of the National Accountability Ordinance, 1999 categorically provides that a fine imposed upon a convict is to be recovered by way of arrears of land revenue and the said provision is not controlled by or subject to the provisions of section 70, PPC.

iii) The sentence of imprisonment in default of payment of fine does not absolve the liability to pay fine and such amount of fine can be recovered despite undergoing the sentence in default of fine for the reason that imprisonment in default of payment of fine is only a punishment for non-payment of fine and is not a substitute for the sentence of fine.

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11. **Supreme Court of Pakistan**
Ikramuddin Rajput v. The Inspector General of Police, Sindh and others.
Civil Petition No.940 -K of 2022
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Saadat Khan.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._940_k_2022.pdf

Facts: This Civil Petition for leave to appeal is directed against the judgment passed by the Sindh Service Tribunal whereby the appeal filed by the petitioner was dismissed.

Issues: i) What is the role of the Investigating Officer in the administration of the criminal justice system?

ii) What is the meaning of the term "investigation" and what are the consequences of defective investigation?

iii) What is the duty and objective of an investigating officer?

iv) Whether an investigating officer can be penalized under any law for failure in carrying out the investigation properly?

v) What is the meaning of "misconduct" as defined in Sindh Police (Efficiency & Discipline) Rules, 1988 and illustrate its various instances?

vi) What are the duties of police officer as defined in Police Order 2002?

vii) What is the purpose and sagacity behind initiating disciplinary proceedings by

the employer and how the same is different from initiating criminal prosecution?
viii) What qualities a person should have to become part of the disciplined force?

Analysis: i) No doubt, an Investigating Officer plays a crucial role in the administration of the criminal justice system and the constituent of investigation report and its worth keeps hold of plenteous value and repercussions on the outcome of any criminal case. However, at times, a botched-up investigation can become a top impediment and stumbling block in the administration of justice, either intentionally with the aim to favour the accused or unintentional due to inefficiency, incompetence, or unskillfulness of the Investigation Officer. The criminal justice system signifies the procedure for adjudicating criminal cases in order to award a sentence to the culprits for the offence committed by them; and the foremost objective is to penalize the offenders subject to the proof whether the offence has been committed or not, and this very important aspect is attached with the burden of proof on the prosecution which has direct nexus with the investigation report and the material and evidence collected by the Investigation Officer in discharge of his sacred duty to bring out the truth without engaging in any manipulation , favoritism, or exceeding the bounds of the law.

ii) According to Section 4 (l) Cr.P.C., the term "investigation" includes all the proceedings under the Cr.P.C. for the collection of evidence conducted by a police officer or by any person. (…) A defective investigation gradually contaminates the judicial process and poses a hazard to human rights.

iii) The importance of this duty or task was also given much significance under Rule 25.2 of the Police Rules, 1934 which deals with the power of Investigating Officers, and under sub -rule 3, it is provided that it is the duty of an Investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person.

iv) At this juncture, it would also be advantageous to point towards Section 166 (2) P.P.C., which lays down that whoever being a public servant entrusted with the investigation of a case fails to carry out the investigation properly or diligently or fails to pursue the case in any court of law properly and in breach of his duties shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both. Whereas Section 27 of the Anti-Terrorism Act, 1997, provides that if an Anti-Terrorism Court or a High Court comes to conclusion during the course of or at the conclusion of the trial that the investigating officer, or other concerned officers have failed to carry out investigation properly or diligently or have failed to pursue the case properly and in breach of their duties, it shall be lawful for such Court or, as the case may be, the High Court, to punish the delinquent officers with imprisonment which may extend to two years, or with fine or with both by resort to summary proceedings.

While a similar provision has been incorporated under Section 22 of the Anti - Rape (Investigation and Trial) Act, 2021, which explicates that whoever, being a

public servant, entrusted to investigate scheduled offences, fails to carry out the investigation properly or diligently or causes the conduct of false investigation or fails to pursue the case in any court of law properly and in breach of duties, shall be guilty of an offence punishable with imprisonment of either description which may extend to three years and with fine.

v) According to Section 2 (v) of the Sindh Police (Efficiency & Discipline) Rules, 1988, "misconduct" means conduct prejudicial to good order or discipline in the Police Force, or contrary to Government Servants (Conduct) Rules, or unbecoming of a Police Officer and a gentleman, any commission or omission which violates any provision of any law or rules regulating the function and duty of Police Officer or to bring or attempt to bring political or other outside influence directly or indirectly to bear on the Government or any Government Officer in respect of any matter relating to the appointment, promotion, transfer, punishment, retirement or other conditions of service of a Police Officer. (…) Further, Article 155 of the Police Order, 2002, underlines various instances of misconduct that impose penalty on the delinquent, which includes any willful breach or neglect of any provision of law or of any rule or regulation or any order which he is bound to observe or obey or any violation of duty.

vi) Even under Article 4 of the Police Order 2002, it is inter alia provided that the duty of every police officer is to protect life, property and liberty of citizens; preserve and promote public peace; ensure that the rights and privileges, under the law, of a person taken in custody, are protected; prevent the commission of offences and public nuisance; detect and bring offenders to justice; apprehend all persons whom he is legally authorized to apprehend and for whose apprehension, sufficient grounds exist; prevent harassment of women and children in public places; afford relief to people in distress situations, particularly in respect of women and children, etc.

vii) The purpose and sagacity behind initiating disciplinary proceedings by the employer is to ascertain whether the charges of misconduct leveled against the delinquent are proven or not and, if so, to determine the appropriate action against him under the applicable Service Laws, Rules and Regulations, which may include the imposition of minor or major penalties in accordance with the sound sense of judgment of the competent Authority. In contrast, the justification and raison d'être for initiating criminal prosecution is entirely different, where the prosecution has to prove the guilt of the accused beyond any reasonable doubt. Both processes have distinctive characteristics and attributes concerning the standard of proof. The object of a departmental inquiry is to investigate allegations of misconduct in order to maintain discipline, decorum, and efficiency within the institution, strengthening and preserving public confidence. In a departmental enquiry, the standard of proof is that of "balance of probabilities or preponderance of evidence" but not "proof beyond reasonable doubt", which is a strict standard required in a criminal trial, where the potential penalties are severe.

viii) The police force is a disciplined force with significant accountability and the responsibility of maintaining law and public order in the society. Therefore, any

person who wants to be part of the disciplined force should be a person of utmost integrity and uprightness with an unimpeachable, spotless character, and clean antecedents.

Conclusions: i) An Investigating Officer plays a crucial role in the administration of the criminal justice system and the constituent of investigation report and its worth keeps hold of plenteous value and repercussions on the outcome of any criminal case.

ii) According to Section 4 (l) Cr.P.C. the term "investigation" includes all the proceedings under the Cr.P.C. for the collection of evidence conducted by a police officer or by any person and defective investigation gradually contaminates the judicial process and poses a hazard to human rights.

iii) It is the duty of an Investigating officer to find out the truth of the matter under investigation and his object shall be to discover the actual facts of the case and to arrest the real offender or offenders.

iv) See above in analysis no. iv.

v) According to Section 2 (v) of the Sindh Police (Efficiency & Discipline) Rules, 1988, "misconduct" means conduct prejudicial to good order or discipline in the Police Force, or contrary to Government Servants (Conduct) Rules and Article 155 of the Police Order, 2002, underlines various instances of misconduct that impose penalty on the delinquent, which includes any willful breach or neglect of any provision of law or of any rule or regulation or any order which he is bound to observe or obey or any violation of duty.

vi) See above in analysis no. vi.

vii) See above in analysis no. vii.

viii) Any person who wants to be part of the disciplined force should be a person of utmost integrity and uprightness with an unimpeachable, spotless character, and clean antecedents.

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12. **Supreme Court of Pakistan**
Re: Justice Sayyed Mazahar All Akbar Naqvi, Judge, Supreme Court of Pakistan
Complaints No. 586, 589, 509 595, 596, 597,
600. 601 and 609 of 2023 /SJC
Mr. Justice Qazi Faez Isa, Justice Sardar Tariq Masood, Justice Syed Mansoor All Shah, Justice Muhammad Ameer Bhatti, Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/complaint_586_2023_sjc_04032024.pdf

Facts: Ten complaints were filed against Justice Sayyed Mazahar Ali Akbar Naqvi before Supreme Judicial Council. The opinion has been reported under Article 209(6) of the Constitution of the Islamic Republic of Pakistan.

Issue: If the proceedings have already been initiated by the Supreme Judicial Council against a Judge, the same shall not abate on his resignation or retirement?

Analysis: We are constrained to conclude that Justice Naqvi violated his oath of office which required him to abide by the Code of Conduct by violating a number of the provisions of the Code of Conduct as follows: Justice Naqvi cannot be said to be *untouched by greed,* and so violated Article-II of the Code of Conduct. It also cannot be stated that he was *above reproach,* and so had violated Article-III of the Code of Conduct. Justice Naqvi's conduct was also not *free from impropriety expected of a Judge* in his *official and private* affairs, and to such extent he also violated Article-III of the Code of Conduct. It is clear that Justice Naqvi's actions were *swayed by consideration of personal advantage,* and so violated Article-IV of the Code of Conduct. He was involved to his personal advantage in the suit filed by Chaudhry Muhammad Shahbaz, and had knowingly deprived minors of their valuable property, and so violated Article-VI of the Code of Conduct. By receiving substantial unexplained gifts, Justice Naqvi violated Article-VI of the Code of Conduct; the gifts included receiving fifty million rupees, his sons receiving two commercial plots and two residential plots at a nominal price and his daughter receiving UK pounds £5,000.

Conclusion: If the proceedings have already been initiated by the Supreme Judicial Council against a Judge, the same shall not abate on his resignation or retirement. Justice Naqvi was found guilty of misconduct and should have been removed from the office of Judge. The number of instances of misconduct committed by Justice Naqvi has damaged the reputation of the judiciary. When the SJC commenced hearing of the complaints, and throughout, he was referred to Sayyed Mazahar Ali Akbar Naqvi as Justice Naqvi, however, as he should have been removed, for having committed serious misconduct, the honorific Justice or Judge should not henceforth be used with Sayyed Mazahar Ali Akbar Naqvi's name.

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13. **Lahore High Court**
Aamir Hayat v. The State etc.
Criminal Appeal No. 193965 of 2018
The State v. Aamir Hayat
Murder Reference No.137 of 2018
Mr. Justice Malik Shahzad Ahmad Khan, Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC901.pdf

Facts: The appellant was convicted for offence u/s 302 (b) PPC by ADSJ who sought acquittal through criminal appeal whereas trial court has transmitted murder reference in terms of section 374 CrPC read with section 338-D PPC for confirmation of death sentence.

Issues: i) Who is chance witness and how testimony of chance witness is to be examined by courts?
ii) What is effect of material conflict in oral and medical evidence?
iii) What is effect if recovered crime empties do not match with weapon?

iv) Whether accused can be held guilty merely on account of his abscondence?

Analysis: i) A chance witness is a witness who claimed that he was present at the crime spot well in time though his presence in ordinary course of business was sheer chance. The testimony of chance witness is always to be examined by the courts with a hard look as in normal course the presumption would be that such witness was not present at the crime spot. Needless to observe that a chance witness has to undergo strict scrutiny so as to qualify as a reliable witness.
ii) The material conflict in the oral account and the medical evidence lends support to the conclusion that the occurrence was in fact not witnessed by prosecution witnesses…
iii) If the crime empties do not match with weapon then their recovery is completely inconsequential…
1iv) It is though argued before us on behalf of the prosecution that the appellant had remained fugitive from law for a considerable period but in absence of any cogent and confidence inspiring evidence qua his guilt, we cannot held him guilty of the offence merely on account of his abscondence which at the most can be termed as a corroborative piece of evidence.

Conclusion: i) See above in analysis no. i.
ii) The material conflict in the oral account and the medical evidence lends support to the conclusion that the occurrence was in fact not witnessed by prosecution witnesses.
iii) If the crime empties do not match with weapon then their recovery is completely inconsequential…
iv) Accused cannot be held guilty merely on account of his abscondence which at the most can be termed as a corroborative piece of evidence.

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14. **Lahore High Court**
Muhammad Wilayat Khan v. Ismail Khan etc.
Writ Petition No. 9346 of 2024.
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2024LHC909.pdf

Facts: The petitioner filed complaint before the Provincial Ombudsman, Punjab, Lahore, inter-alia with the allegations that land of graveyard and two ponds was illegally allotted by the Revenue Authorities to the private persons, who directed the Additional Deputy Commissioner (Revenue), to restore original position of Khasra No.1599 according to its status prior to the years 1984-85. Aggrieved of the said decision, respondents No.1 to 3 filed representation before the Governor, Punjab, Lahore (respondent No.5) in terms of section 32 of the Punjab Office of the Ombudsman Act, 1997 which was allowed. Aggrieved of order passed by respondent No.5, the petitioner has filed this petition.

Issues: i) When the consolidation scheme has been confirmed whether it can be

challenged under the garb of section 9 of the Punjab Office of the Ombudsman Act, 1997?

ii) Whether under section 13 of the Punjab Consolidation of Holdings Ordinance 1960, Board of Revenue has been empowered to call for record of any consolidation proceedings of its own or on the move of a party, irrespective if any limitation?

iii) When a forum has not been blessed with jurisdiction to hear a matter, whether same can be bestowed even with the consent of opponent side?

Analysis: i) While responding to Court's query that as to how respondent No.4 had jurisdiction to deal with any issue relating to consolidation proceedings, learned counsel for the petitioner has referred to section 37 of the Act, 1997 to establish that as the said Act has over-riding effect, the jurisdiction of respondent No.4 was fully attracted notwithstanding the decisions of the consolidation authorities. The over-riding effect is to the extent of any other law for the time being in force and it does not cover the orders passed by the authorities concerned, under the relevant law. Had the petitioner approached the consolidation authorities before confirmation of consolidation proceedings, the referred provision could come to his rescue but when the consolidation scheme was confirmed by the relevant authorities he was supposed to challenge the same in appropriate proceedings under the provisions of the Ordinance, 1960 and challenge to said proceedings under the garb of section 9 of the Act, 1997 was a misconception.

ii) While responding to Court's query as to why the petitioner is shy to approach the authorities established under the Ordinance, 1960, for redressal of his grievance, learned counsel for the petitioner states that since more than four decades have already passed, if any move is made by the petitioner, it would go abortive on the point of limitation. In this regard, I do not see eye-to-eye with learned counsel for the petitioner for the reason that section 13 of the Ordinance, 1960 deals with powers of the Board of Revenue to call for and examine record relating to consolidation proceedings and if any omission or commission is noted, same can be cured. According to the afore-quoted provision, Board of Revenue has been empowered to call for record of any consolidation proceedings of its own or on the move of a party, irrespective of any limitation, thus, the apprehension of the petitioner that if he approaches the consolidation authorities, under the provisions of the Ordinance, 1960, he would be knocked out on the basis of limitation, is misconceived.

iii) Now coming to plea of learned counsel for the petitioner that since the matter was referred to the revenue authorities in view of the consent of the Additional Deputy Commissioner (Revenue), Narowal, respondent No.5 could not reverse the findings of respondent No.4, I am of the view that when a forum has not been blessed with jurisdiction to hear a matter, same cannot be bestowed even with the consent of opponent side.

Conclusion: i) When the consolidation scheme has been confirmed it cannot be challenged

under the garb of section 9 of the Punjab Office of the Ombudsman Act, 1997.
ii) Under section 13 of the Punjab Consolidation of Holdings Ordinance 1960, Board of Revenue has been empowered to call for record of any consolidation proceedings of its own or on the move of a party, irrespective if any limitation.
iii) When a forum has not been blessed with jurisdiction to hear a matter, same cannot be bestowed even with the consent of opponent side.

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15. **Lahore High Court**
Irfan Mohsin v. Additional District and Sessions Judge & others
Writ Petition No.4265 of 2020.
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2024LHC920.pdf

Facts: The learned Judge Family Court, vide judgment and decree, while dismissing the claim of respondent No.1 for recovery of delivery charges as well as her maintenance, declared her entitled to recover dower amount in terms of condition mentioned against column No.19 of Nikah Nama and Rs.150,000/- as price of dowry articles. Further, the minor was held entitled to recover maintenance. Aggrieved of the judgment and decree of trial Court, the petitioner filed an appeal and the appellate Court vide judgment and decree while reversing the findings of learned trial Court reduced the quantum of maintenance of the minor and upheld rest of the findings of trial Court. Aggrieved of judgments and decrees of trial Court as well as appellate Court the petitioner has filed this petition whereas through the connected petition, respondent No.1 has assailed the vires of judgment & decree of learned appellate Court.

Issues: i) Whether Nikah Registrar is duty bound to accurately fill all the columns of the nikahnama form and what if he fails to perform his duty?
ii) What is the remedy available to the party if the Nikah Khawan/Registrar mentioned un-settled conditions in the Nikah Nama?
iii) Whether the oral assertion of witness can be relied while deciding lis between parties?

Analysis: i) According to section 6(2A) of the Muslim Family Laws Ordinance, 1961, the Nikah Registrar or the person who solemnizes a Nikah shall accurately fill all the columns of the nikahnama form with specific answers of the bride or the bridegroom. Moreover, according to section 5(5) of the said Ordinance, the form of nikahnama, the registers to be maintained by Nikah Registrars, the records to be preserved by Union Councils, the manner in which marriages shall be registered and copies of nikahnama shall be supplied to the parties, and the fees to be charged therefor, shall be such as may be prescribed. If Nikah Khawan/Registrar fails to perform his duties diligently instead of taking any action against any party, Nikah Khawan/Registrar should be held accountable…
ii) If the Nikah Khawan/Registrar mentioned un-settled conditions in the Nikah Nama, the party could conveniently approach the Deputy Commissioner or the

authorities of the Local Government concerned for rectification in addition to putting the criminal machinery in motion by filing a complaint before the relevant authority as a Nikah Khawan/Registrar falls within the definition of „public servant" in terms of section 21 of Pakistan Penal Code.
iii) It is well settled by now that if an oral assertion of a witness is not corroborated by relevant document, it is not safe to rely upon such oral assertion while deciding lis between the parties.

Conclusion: i) The Nikah Registrar shall accurately fill all the columns of the nikahnama form with specific answers of the bride or the bridegroom and if Nikah Khawan/Registrar fails to perform his duties diligently instead of taking any action against any party, Nikah Khawan/Registrar should be held accountable.
ii) If the Nikah Khawan/Registrar mentioned un-settled conditions in the Nikah Nama, the party could conveniently approach the Deputy Commissioner or the authorities of the Local Government concerned for rectification.
iii) If an oral assertion of a witness is not corroborated by relevant document, it is not safe to rely upon such oral assertion while deciding lis between the parties.

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16. **Lahore High Court**
Mian Raza Jillani and others v Province of Punjab through its Chief Secretary to Govt. of Punjab, Civil Secretariat, Lahore and others
Writ Petition No.7155 of 2024
Mr. Justice Shahid Bilal Hassan.
https://sys.lhc.gov.pk/appjudgments/2024LHC786.pdf

Facts: Through instant Constitutional petition, the petitioners assailed the notice of the respondents, wherein they were directed to vacate the possession of the property in dispute.

Issues: i) What is the principle of approbate and reprobate?
ii) Whether a party is entitled for alternate relief at subsequent stage, which he has not claimed it in the first petition?

Analysis: i) When a party in its earlier petition has availed the remedy and is satisfied with the proceedings and actions to be conducted in accordance with law by the respondent and impliedly did not press it, the subsequent petition on the same subject is not maintainable because the same is hit by the principle of approbate and reprobate.
ii) If a party never agitated for alternate relief which was available to him at the time of filing the first petition, at subsequent stage, he cannot claim as such because the Order II Rule 2, Code of Civil Procedure, 1908 comes in his way.

Conclusion: i) When a party in its earlier petition has availed the remedy and is satisfied with the proceedings, the subsequent petition on the same subject is not maintainable because the same is hit by the principle of approbate and reprobate.

ii) If a party never agitated for alternate relief which was available to him at the time of filing the first petition, at subsequent stage, he cannot claim it.

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17. **Lahore High Court**
Rasheed Ahmad v. Azra Parveen (deceased) through L.Rs. and others
Civil Revision No.11729 of 2019
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC894.pdf

Facts: The respondent No.1 instituted a suit for declaration and permanent injunction challenging the oral sale mutation which was duly contested by them while submitting written statements. The trial Court dismissed suit of the respondent No.1, who being aggrieved preferred an appeal there-against. The appellate Court accepted the appeal and decreed the suit in favour of the respondent No.1; hence, the instant revision petition.

Issues: i) Whether the original transaction is to be proved when mutation is under challenged?
ii) Whether old and illiterate ladies are entitled to the same protection which is available to the Parda observing lady under the law?
iii) Whether the preference will be given to the findings of appellate court in case of inconsistency between the findings of trial court and the appellate court?

Analysis: i) Mutation confers no title and once a mutation is challenged, the party relying thereon is bound to revert to the original transaction and to prove such original transaction, which resulted into the entry of attestation of such mutation.
ii) High Court has held that old and illiterate ladies are entitled to the same protection which is available to the Parda observing lady under the law.
iii) It is a settled principle, by now, that in case of inconsistency between the findings of the trial Court and the Appellate Court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary.

Conclusion: i) Mutation confers no title and once a mutation is challenged, the party relying thereon is bound to revert to the original transaction and to prove such original transaction.
ii) Old and illiterate ladies are entitled to the same protection which is available to the Parda observing lady under the law.
iii) In case of inconsistency between the findings of the Trial Court and the Appellate Court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary.

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18. **Lahore High Court**
Abdul Ghaffar v. Muhammad Iqbal
RFA No.1181 of 2016
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC882.pdf

Facts: The respondent instituted a suit under Order XXXVII, Rules 1 and 2, of CPC for recovery on the basis cheque against the present appellant, wherein the appellant filed application for leave to appear and defend the suit, which was accepted and he contested the suit. Ultimately, the trial Court decreed the suit in favour of the respondent, against the present appellant; hence, the instant appeal.

Issue: Whether in a suit for recovery on the basis of a negotiable instrument, certain presumptions are attached to the negotiable instrument as to the passing of consideration, date, time etc., in terms of section 118 of the Negotiable Instruments Act 1881?

Analysis: There are certain presumptions attached to the same in terms of Section 118 of the Negotiable Instruments Act, in a suit for recovery on the basis of a negotiable instrument, as to the passing of consideration, date, time etc., which though is rebuttable by leading evidence by the defendant. The defendant, in the suit, by setting up a probable defence can counter the said legal presumption as regards the date and time of execution and also the consideration by leading unimpeachable and confidence inspiring evidence or circumstances of the case.

Conclusion: In a suit for recovery on the basis of a negotiable instrument, certain presumptions are attached to the negotiable instrument as to the passing of consideration, date, time etc., in terms of section 118 of the Negotiable Instruments Act 1881, which though are rebuttable by leading evidence by the defendant.

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19. **Lahore High Court**
M/s Saeed Buksh (Pvt.) Ltd v. Mst. Azra Bibi
F.A.O.No.637 of 2014
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC889.pdf

Facts: Appeal has been filed impugning the order passed by the Rent Controller on application seeking setting aside of ex parte order alongwith an application under sections 5 & 14 of the Limitation Act, 1908 for condonation of delay.

Issues: (i) Import of Order V Rules 9,19 & 20 CPC
(ii) Effect of affidavit which is not controverted by counter affidavit?
(iii) Limitation for filing application for setting aside ex parte proceedings
(iv) Whether ex parte proceedings can be initiated on the date which was not fixed for hearing?

Analysis: (i) Admittedly service of notice upon was not affected through authorized agent of the present appellant. However, the learned Rent Tribunal without recording statement of process server as required by Rule 19 of Order V, Code of Civil Procedure, 1908, resorted to substituted service under Rule 20, which otherwise should have been recorded and after being satisfied that service upon the appellant

was not possible through ordinary means, might have proceeded to get procured service of the appellant through substituted means of publication of Court notice in the newspaper.
(ii) If an affidavit was not controverted by counter affidavit then the same would be considered to have been accepted and conceded.
(iii) The limitation for filing application for setting aside ex parte proceedings and order is governed by Article 181 of the Limitation Act, 1908 which provides three years limitation to approach the Court in this regard.
(iv) Ex parte proceedings were initiated on the date which was not fixed for hearing rather it was fixed for further proceedings, therefore, such penal order should not have been passed against the appellant.

Conclusion: (i) Appellant has been condemned unheard as no proper service was effected.
(ii) See above in analysis no. ii.
(iii) Limitation period for setting aside ex parte proceedings is three years.
(iv) See above in analysis no. iv.

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20. **Lahore High Court**
Nooruddin Feerasta & others v. Lahore Development Authority (LDA) & others
W.P No.17085 of 2022
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2024LHC812.pdf

Facts: The petitioners filed a Constitutional petition being aggrieved of the construction of an apartment building by respondent adjacent to the residential plot which fell foul of the provisions of the Lahore Development Authority Building and Zoning Regulations, 2019.

Issues: (i) Whether under Regulation 10.3.3 of Regulations of 2019, sina qua non for the sanctioning of any apartment building is obtaining of NOC from Environmental Protection Agency (EPA) and for an NOC to be had from EPA, the application must be accompanied by an EIA?
(ii) Import of Regulation 11.3 of 2019.
(iii) Requirement of 40 feet right of way in terms of Regulation 2.5 for the construction of apartment building?
(iv) Vires of Regulation 10.3.3(g) of 2019.

Analysis: (i) It is clear that for a project to require an EIA it must be categorized as a project likely to cause an adverse environmental effect and this must have been done by LDA or EPA in the present case. Since it has not been done in respect of the disputed project, it cannot be argued that the disputed project required an EIA as a pre-condition to the grant of an NOC by EPA. In the present case, IEE would suffice.
(ii) Regulation 11.3 is not engaged in this case and does not apply in the case of disputed building of the respondent. Regulation 11.3 comes into effect where

LDA intends to prescribe higher category of high rise to the already declared category of high rise zones defined at 11.1. Regulation 11.3 is the procedure and criteria which has been prescribed in case any zone is sought to be raised in to any higher height zone from time to time.

(iii) Right of way would mean the width of the street between to opposite property lines. It does not mean merely the road on which vehicles are intended to ply. It will also include footpaths for the passengers as also green areas which are required to be maintained outside the buildings by the owners. There is no rebuttal to the assertion that there is a 40 feet right of way between the property line of the disputed building and boundary wall of the opposite plot. Be that as it may, there is no contention that 40 feet right of way has to be maintained in the construction of Apartment buildings and since this requires a factual inquiry, LDA shall, at its own, ensure its compliance in letter and spirit.

(iv) Regulation 10.3.3(g) begins with the words "Subject to the provisions of Pakistan Environment Protection Act, 1997," (The Condition) and thereby engages the 1997 Act in its entirety. This part of Regulation 10.3.3.(g) travels beyond the primary enactment viz. The Lahore Development Authority Act, 1975. Such a condition could not be provided in the Regulations if the 1975 Act did not place such a clog. The decision to require an EIA or an IEE is for the LDA to make and Regulation 10.3.3(g) does in fact require an EIA, but for this condition. The policy regarding Apartment Buildings cannot be viewed in isolation and in the setting of one particular building only. The canvass has to be widened and the entire array of buildings being constructed and their impact on environment has to be at the heart of the policy. The Condition is a serious clog on such an effort and must be struck down. Henceforth any construction of an Apartment building would require an EIA and No Objection Certificate for EPA.

Conclusion: (i) Disputed project didn't require an EIA as a pre-condition to the grant of an NOC by EPA only IEE would suffice.

(ii) Regulation 11.3 is not engaged in this case and does not apply in the case of disputed building.

(iii) See above in analysis no. iii.

(iv) See above in analysis no. iv.

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21. **Lahore High Court**
Mst. Qamar Bibi (Late) through her Legal Heirs v. Shahab-ud-Din & another
Civil Revision No.233690 of 2018
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC802.pdf

Facts: The petitioners assailed judgment & decree passed by an Additional District Judge, whereby respondent No.1's appeal against Trial Court's judgment & decree dismissing respondent No.1's suit for possession through specific performance of agreement to sell, was allowed and aforesaid suit was decreed.

Issues: i) Whether the failure on part of a vendee to demonstrate his/her capacity, readiness and willingness to perform his/her part of obligation disentitles him/her to relief of specific performance?

ii) Whether a court can require the vendee to first deposit the balance sale consideration upon filing of a suit seeking specific performance of an agreement in respect of an immovable property?

iii) What should be the procedure in case a seller/vendor refused to receive the sale consideration?

iv) Whether a scribe can replace the requirement of producing other marginal witnesses?

v) Whether compliance of Order XLI Rule 31 C.P.C. is mandatory in its nature?

Analysis: i) It is now well-settled that even where the vendor refuses to accept the sale consideration amount, the vendee seeking a specific performance of the agreement to sell is essentially required to deposit the amount in the Court, which demonstrates his / her capability, readiness and willingness to perform the obligation…Section 24 of the Specific Relief Act, 1877 details the contracts which cannot be specifically enforced and section 24(b) provides that specific performance of a contract cannot be enforced in favour of a person who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed….Likewise, as per Section 54 of the Contract Act, 1908 when a contract consists of reciprocal promises, then second promise cannot be insisted to be done nor failure thereof can be claimed for damages or as a ground to fail the agreement unless it is established that the first promise was done.

ii) There is no provision in the Specific Relief Act, 1877, which casts any duty on the Court or requires the vendee to first deposit the balance sale consideration upon filing of the suit seeking specific performance of an agreement in respect of an immovable property. However, the relief of specific performance is discretionary and based on the principles of equity, thus, cannot be claimed as a matter of right. Therefore, the Court in order to ensure the *bona fide* of the vendee at any stage of the proceedings may put him to terms. Furthermore, such plaintiff is not only supposed to narrate in the plaint his readiness and willingness to fulfill his part of the agreement but also is bound to demonstrate through supporting evidence such as pay orders, Bank statement or other material, his ability to fulfill his part of the deal leaving no doubt in the mind of the Court that the proceedings seeking specific performances have been initiated to cover up his default or to gain time to generate resources or create ability to fulfill his part of the deal. It was, for this reason, mandatory for the plaintiff to prove that at the relevant time he had sufficient money to pay the remaining sale price.

iii) In a suit for specific performance of land, if the seller / vendor has refused to receive the sale consideration, or any part thereof, it should be deposited in Court and invested in some government protected security (such as Defence or National Savings Certificates); in case the suit is decreed the seller

would receive the value of money which prevailed at the time of the contract and in case the buyer loses he can similarly retrieve the deposited amount.

iv) It is settled law that an agreement to sell an immovable property squarely falls within the purview of the provisions of Article 17(2) of the Qanun-e-Shahadat Order, 1984 and has to be compulsorily attested by the two witnesses and this is sine qua non for the validity of the agreement. For the purposes of proof of such agreement involving financial obligation it is mandatory that two attesting witnesses must be examined by the party to the lis as per Article 79 of the Order ibid….This Article [Article 79] in clear and unambiguous words provides that a document required to be attested shall not be used as evidence unless two attesting witnesses at least have been called for the purpose of proving its execution. The words "shall not be used as evidence" unmistakably show that such document shall be proved in such and no other manner. The words "two attesting witnesses at least" further show that calling two attesting witnesses for the purpose of proving its execution is a bare minimum. Nothing short of two attesting witnesses if alive and capable of giving evidence can even be imagined for proving its execution. Construing the requirement of the Article as being procedural rather than substantive and equating the testimony of a Scribe with that of an attesting witness would not only defeat the letter and spirit of the Article but reduce the whole exercise of re-enacting it to a farce. Therefore, a scribe of a document can only be a competent witness if he has fixed his signature as an attesting witness of the document and not otherwise; his signing the document in the capacity of a writer does not fulfil and meet the mandatory requirement of attestation by him separately, however, he may be examined by the concerned party for the corroboration of the evidence of the marginal witnesses, or in the eventuality those are conceived by Article 79 itself not as a substitute.

v) A judgment should discuss and cover all substantial points involved in the case and also should reflect that Court has scanned and examined the material available on record minutely as well as evidence adduced by the parties supported with relevant documents pragmatically. Compliance of Order XLI Rule 31 C.P.C. is mandatory in its nature and the Appellate Court could not evade these provisions by taking divergent view on erroneous surmises and conjectural presumptions**.** Such a practice of the Appellate Court, if allowed, would frustrate the whole scheme of legislature by attributing redundancy to such mandatory provisions of law, which cannot be countenanced. Rationale behind said provision is that not only the party losing the case but the next higher forum may also understand what weighed with the Court in deciding the lis against it.

Conclusion: i) The failure on part of a vendee to demonstrate his/her capacity, readiness and willingness to perform his/her part of obligation disentitles him/her to relief of specific performance.

ii) A court can require the vendee to first deposit the balance sale consideration upon filing of a suit seeking specific performance of an agreement in respect of an immovable property.

iii) In case a seller/vendor refused to receive the sale consideration, it should be

deposited in Court and invested in some government protected security.
iv) A scribe cannot replace the requirement of producing other marginal witnesses.
v) The compliance of Order XLI Rule 31 C.P.C. is mandatory in its nature.

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22. **Lahore High Court**
Muhammad Ashraf v. The State etc.
Crl. Misc. No.17013/B/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC7721.pdf

Facts: By this application, the Petitioner seeks post-arrest bail in case for an offence under section 22(1) of the Punjab Food Authority Act, 2011.

Issues: i) What is the effect of saving clause?
ii) What the effect of Rules made under a statute and what are the principles of its interpretation?
iii) Whether failure to follow the prescribed procedure renders the entire action or proceedings invalid?
iv) Whether Rule 52 of the Food Rules of 2011 is mandatory?
v) Whether bail can be granted in offences not falling within the prohibitory clause as a rule, and refusal is an exception?

Analysis: i) When a statute repeals an earlier statute, and it is an unqualified repeal, then the effect of such repeal is that the earlier statute gets repealed in its entirety. However, where the Legislature intends to preserve any power or inchoate right in relation to the repealed statute, then a saving clause is incorporated in the repealing statute whereby certain provisions are preserved from getting repealed to the extent and with regard to the subject mentioned in the saving clause. The provisions of the repealed law that are so preserved are to be regarded as if the repealed statute was still in operation.
ii) It is by now well settled that the Rules validly made under a statute have the same effect as the statute itself and are enforced as such. (…) Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction or obligation. (…) In view of the above, the same principles that are followed for the construction of statutes are used to interpret the Rules.
iii) In general, where the law specifies a mode of performing a duty, it must be performed in that particular manner or not at all. This canon stems from the maxim expressio unius est exclusio alterius. However, the question arises as to whether failure to follow the prescribed procedure renders the entire action or proceedings invalid. There is no principle of universal application to classify a provision as mandatory or directory. It depends upon the intent of the Legislature rather than the phraseology used.

iv) Rule 52 of the Food Rules of 2011 lists food items and prescribes the minimum quantity required for preparing a sample in each case. There is a statutory presumption that the specified amount is the minimum requirement for an authentic Public Analyst's report. Since the prosecution of several offences under Chapter IV of the PFA Act depends on that report, I hold that Rule 52 is mandatory. Any other conclusion will not only prejudice an accused at the trial but also defeat his right to a fair trial guaranteed under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973.
v) The offence under section 22(1) of the PFA Act with which the Petitioner has been charged does not fall within the prohibitory clause of section 497 Cr.P.C. In Tariq Bashir and others v. The State (PLD 1995 SC 34), the Supreme Court of Pakistan held that in such cases, the grant of bail is a rule, and refusal is an exception.

Conclusions: i) See above in analysis no. i.
ii) Rules validly made under a statute have the same effect as the statute itself and the same principles that are followed for the construction of statutes are used to interpret the Rules.
iii) In general, where the law specifies a mode of performing a duty, it must be performed in that particular manner or not at all. There is no principle of universal application to classify a provision as mandatory or directory. It depends upon the intent of the Legislature rather than the phraseology used.
iv) Rule 52 of the Food Rules of 2011 is mandatory.
v) Where an offence does not fall under the prohibitory clause, the grant of bail is a rule, and refusal is an exception.

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23. **Lahore High Court**
Muhammad Banaras v. Govt. of The Punjab etc.
W.P.No.862/2020
Mr. Justice Jawad Hassan.
https://sys.lhc.gov.pk/appjudgments/2024LHC839.pdf

Facts: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the Petitioner has challenged the *vires* of notification issued by Respondent No.2 with contention that the Petitioner cannot be stopped from cutting down trees on his privately owned land.

Issue: Whether the Deputy Commissioner has power to issue the notification under the Guzara Land Rules to restrict a person from cutting down trees on his privately owned land?

Analysis: The Deputy Commissioner does not come within definition of the Government. Rules 4 and 7 of the Rules for the Conservancy of Forests and Jungles in the Hill Districts of the Punjab Territories, 1855 empower the Civil Authorities to impose certain prohibitions or restrictions on felling of trees on any land in a hill district. Rule 76 of the Forest Act, 1927 empowers the Government to make rules. Under

Section 2(j) of the Forest Act, 1927, Government means the Government of the Punjab. As per Second Schedule to the Punjab Government Rules of Business, 2011, the Forestry, Wildlife and Fisheries Department is entrusted with the powers to administer of the Forest Act, 1927 and the rules made thereunder, whereas Rule 20 of the Punjab Government Rules of Business, 2011 provides that the Law and Parliamentary Affairs Department shall be consulted by other departments on matters concerning delegated legislation, such as, rules and regulations etc. Furthermore, under Rule 3(3) of the Punjab Government Rules of Business, 2011, the business of the Government is distributed amongst several Departments in the manner indicated in the Second Schedule and Secretary, Forestry, Wildlife and Fisheries Department, Punjab can take cognizance of the matter in terms of Rule 10 of the Punjab Government Rules of Business, 2011, which clearly states that the Secretary shall be the official head of the Department and be responsible for its efficient administration and discipline, for the conduct of business assigned to the Department and for the observance of laws and rules.

Conclusion: The Deputy Commissioner has no power to issue the notification under the Guzara Land Rules, to restrict a person from cutting down trees on his privately owned land, rather, it is the Government, which can only impose such kind of restrictions.

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24. **Lahore High Court**
Asif alias Asad & three others v. The State & another
Criminal Appeal No.245/2016
Jamshaid Ahmad v. The State & another
Criminal Appeal No.409/2016
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2024LHC830.pdf

Facts: This single judgment will dispose of both Criminal Appeals filed by appellants/convicts) against their conviction and sentence as these both have arisen out of one and the same impugned judgment dated passed by learned Additional Sessions Judge/trial court.

Issues: i) Whether common object is necessary ingredient for invoking section 148 of PPC?
ii) Whether report of Forensic Science Agency regarding mere working capability of a weapon can provide any corroboration to the prosecution case where as per report of Forensic Science Agency the weapon was though in working condition yet empties secured from the place of occurrence did not match with said weapon?
iii) Whether report of Forensic Science Agency regarding matching of empties with allegedly recovered weapon is inconsequential when empties were sent to Punjab Forensic Science Agency after arrest of accused?
iv) If same/identical role has been alleged against more than one accused and

anyone out of them has been acquitted, then in absence of the strong corroboration, other accused persons against whom also similar allegation was levelled by the prosecution, can be convicted and sentenced?

Analysis: i) Perusal of the aforementioned provisions of law makes it crystal clear that if "rioting" is committed by the accused persons while armed with deadly weapons then they are to be punished under Section of 148 PPC and as per Section of 146 PPC, "rioting" is use of force or violence by an unlawful assembly or by any member thereof in prosecution of the common object of said assembly and it is equally important to mention here that as per Section of 141 PPC, assembly is designated as "unlawful assembly" if same has been constituted for achieving "common object" mentioned in five clauses mentioned therein; Hence, "common object" is necessary ingredient for invoking Section of 148 PPC.

ii) Though learned Deputy Prosecutors General as well as learned counsel for the complainant emphasis that corroboration is available in the form of recoveries effected from appellants, however, it is worth mentioning here that weapons recovered from appellant were sent to Punjab Forensic Science Agency, Lahore and as per report of said agency, said both weapons were though in working condition yet empties secured from the place of occurrence and sent to Punjab Forensic Science Agency for comparison, did not match with said weapons. In such perspective, report of Punjab Forensic Science Agency regarding mere working capability of said weapons cannot provide any corroboration to the case of prosecution against both these appellants.

iii) Hence, when empties were sent to Punjab Forensic Science Agency after arrest of appellant, then report of said Agency regarding matching of empties with allegedly recovered shotgun from appellant is inconsequential.

iv) By now it is well settled that, if same/identical role has been alleged against more than one accused and anyone out of them has been acquitted, then in absence of the strong corroboration, other accused persons against whom also similar allegation was levelled by the prosecution, cannot be convicted and sentenced.

Conclusion: i) Common object is necessary ingredient for invoking section 148 of PPC.

ii) Report of Forensic Science Agency regarding mere working capability of a weapon cannot provide any corroboration to the prosecution case where as per report of Forensic Science Agency the weapon was though in working condition yet empties secured from the place of occurrence did not match with said weapon.

iii) Report of Forensic Science Agency regarding matching of empties with allegedly recovered weapon is inconsequential when empties were sent to Punjab Forensic Science Agency after arrest of accused.

iv) If same/identical role has been alleged against more than one accused and anyone out of them has been acquitted, then in absence of the strong corroboration, other accused persons against whom also similar allegation was levelled by the prosecution, cannot be convicted and sentenced.

25. **Lahore High Court**
Muhammad Rafie v. Ghaneem Aabir, etc.
Crl. Misc. No.73505-CB/2023
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2024LHC938.pdf

Facts: Through instant petition filed under Section: 497 (5) Cr.P.C., petitioner/complainant of case has challenged the *vires* of order passed by learned Addl. Sessions Judge whereby respondent No.1/accused was granted pre-arrest bail in case arising out of F.I.R. registered under Sections: 420, 468, 471 PPC read with Section 58 of the Legal Practitioners and Bars Councils Act, 1973.

Issues: i) Whether appearance of a person in courts posing himself/herself as an advocate is a serious offence?
ii) In what kind of cases extra-ordinary relief of pre-arrest bail is granted?
iii) When bail is to be recalled?

Analysis: i) …It goes without saying that Advocate is such a trusted statutory entity that person comes to him, shares most confident and valuable issues of his/her life with him, hands over documents including valuable instruments along with fee to him/her but if he/she is not advocate, then it is not mere cheating with the clients/public-at-large and actual advocates but also with the courts where he/ she appears while posing himself/herself as advocate. So, it is heinous/serious offence against the entire legal system of the country.
ii) Pre-arrest bail is an extra-ordinary concession, which is meant for protecting innocent people and same is granted only and if reasonable grounds are existing on the record to show that accused is not guilty of the alleged offence rather the case is of further inquiry and furthermore intended arrest of the accused is an outcome of *mala fide*, malice and ulterior motive for humiliating him.
iii) It is by now also well settled that if bail has been granted to accused while ignoring sufficient material available against him on the record, then it is to be recalled.

Conclusion: i) Yes, it is heinous/serious offence against the entire legal system of the country.
ii) See above in analysis clause no. ii.
iii) If bail has been granted to accused while ignoring sufficient material available against him on the record, then it is to be recalled.

26. **Lahore High Court**
Muhammad Akram v. Haji Ilam Din (deceased) through L.Rs and others
W.P. No.48863 of 2023
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC850.pdf

Facts: Petitioner in this constitutional petition has challenged order of Addl. Session Judge whereby application to summon the Record Keeper of Treasury Office along with the record regarding stamp-paper issued by Stamp Vendor and for recording his statement as a court-witness, was allowed by setting aside the order Civil Judge while accepting the revision petition

Issues: i) Whether the court has power to condone the default in filing list of witnesses within seven days?
ii) Whether the court at any time if it considers it necessary to examine any person other than a party to the suit and who is not called as a witness by a party in the suit may examine such person as witness on its own motion?

Analysis: i) As regards the objection of Order XVI, Rule 1, C.P.C. to the effect that a party could not summon any person as a witness unless they are named in the list of witnesses which could be filed within seven days, there is no cavil with the proposition. It is also true that proviso to Rule 1 of Order XVI, C.P.C. empowers the court to condone the default in filing the list of witnesses within seven days if "sufficient cause" or "good reason" is shown to exist.
ii) Where the court at any time considers it necessary to examine any person other than a party to the suit and who is not called as a witness by a party in the suit, the court may of its own motion cause such person to be summoned as a witness to give evidence or to produce any document in his possession, on a day to be appointed; and may examine such person as a witness or require him to produce such document. Rule 14-A of Order XVI, C.P.C. was inserted by the Lahore High Court Amendment which is to the effect that when a witness is summoned by the Court of its own motion under Rule 14 of Order XVI, C.P.C. their diet money, etc. will be paid by such party or parties as the Court may in its discretion, direct… Rule 14 of Order XVI, C.P.C. empowers the Court to summon any witness for recording his statement or produce any document if need be for the just and fair decision of the case even if the parties to the suit had failed to produce them in the court.

Conclusion: i) Proviso to Rule 1 of Order XVI, C.P.C. empowers the court to condone the default in filing the list of witnesses within seven days if "sufficient cause" or "good reason" is shown to exist.
ii) The court at any time if it considers it necessary to examine any person other than a party to the suit and who is not called as a witness by a party in the suit may examine such person as witness on its own motion.

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27. **Lahore High Court**
Begum Tasneem Akhtar (deceased) through L.Rs v. The learned Addl. District Judge, Lahore and others
W.P. No.49163 of 2023
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC956.pdf

Facts: Petitioners through this constitutional petition assail orders of the courts below by which an application under section 151 C.P.C. objecting to admissibility of documents was rejected and the revision petition filed there against was also dismissed.

Issue: Whether the admissibility of documents absolves party from proving contents as per legal requirements?

Analysis: There is a distinction between the admissibility and proof of documents. Where a document is tendered in evidence it cannot serve any purpose unless it is proved in accordance with law. The provisions of Articles 78 and 79 of Qanun-e-Shahadat Order, 1984 obligate the production of executant, marginal witnesses, scribe and other admissible evidence to prove any document, which cannot be dispensed with…Mere fact that the documents have been exhibited does not mean that the court is denuded of its obligation to consider the entire evidence so as to conclude whether or not the documents were proved in accordance with the provisions of Qanun-e-Shahadat Order, 1984 and their production alone will not, of course, mean that the documents are proved or are an evidence of the facts in controversy which were required to be proved by fulfilling the mandatory conditions of Article 79 of Qanun-e-Shahadat Order, 1984… The documents would only be used as piece of evidence if the litigants placing reliance thereon would be able to satisfy that they had produced the witnesses and followed the procedure as per Article 79 of Qanun-e-Shahadat Order, 1984.

Conclusion: The admissibility of documents does not absolve party from proving contents as per legal requirements.

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28. **Lahore High Court**
Shameem Omer and others v. Niaz Ahmad and others
W.P. No.38767 of 2023
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC975.pdf

Facts: This petition stems from order of the learned Addl. District Judge in terms whereof the appeal of respondent No.1/ against order of his eviction was accepted; the order was set aside and the ejectment application brought by petitioner was dismissed.

Issues: i) What is purpose of exercise of right of cross-examination and what will be presumed if witness does not turn up for cross examination?
ii) Whether affidavit tendered in evidence as examination in chief can be worthy of consideration if opposite side is not given the opportunity to cross examine the witness?
iii) How a document ought to be proved which is required by law to be attested by two witnesses?

iv) Whether is there any restriction that tenancy agreement must be in writing?

Analysis: i) Under law the statement of a witness comprises examination-in-chief and cross-examination. The exercise of cross-examination is right of the opposite side as a device of due process to provide opportunity to show the statement to be false and unworthy of consideration. If the witness does not turn up for cross-examination nor the party produced such witness or show any interest to produce the witness, the presumption will be that the witness was not prepared to face the truth and that his statement is not worthy of consideration.

ii) In so far as the affidavits as statement in examination-in-chief of witnesses tendered, the same are also unworthy of consideration as in law the deponent unless appears for cross-examination and allow this opportunity to the opposite side, the affidavit of the witness would be deemed in law inadmissible and unworthy of credence.

iii) As per settled rule, a document which is required to be attested by two witnesses need to be proved by production of two marginal witnesses who shall make complete statement i.e. examination-in-chief and cross examination.

1iv) As regards the respondent's objection that the oral tenancy was claimed and that there was no document to support it, the same is ill founded. In law a tenant means a person who undertakes or is bound to pay the rent as consideration for the occupation of the premises by him and includes a person who continues to be in occupation of the premises after the termination of his tenancy as also legal heirs of the tenant after his demise. There is no restriction in law to the nature of tenancy which can be either oral or in writing. It is also a rule that if a person occupies the premises which is owned by other person then his status could be presumed to be as a tenant unless proved otherwise.

Conclusion: i) See above in analysis clause no. i.

ii) Affidavit tendered in evidence as examination in chief cannot be worthy of consideration if opposite side is not given the opportunity to cross examine the witness

iii) A document which is required to be attested by two witnesses need to be proved by production of two marginal witnesses who shall make complete statement i.e. examination-in-chief and cross examination.

iv) There is no restriction in law to the nature of tenancy which can be either oral or in writing.

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29. **Lahore High Court**
Riasat Ali Sahi v. Ijaz Ahmad and others
C.R. No.220345 of 2018
Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC966.pdf

Facts: Petitioner filed a suit to preempt the sale of land reflected through sale deed on the plea of having superior right of preemption which was contested and

ultimately dismissed by the learned Civil Judge. Petitioner's appeal thereagainst also met the same fate vide judgment of the learned Addl. District Judge which judgments are now under challenge in this revision petition.

Issues: i) Whether mentioning of date, time and place in the plaint qua Talb-e-Muwathibat in a suit for preemption is a condition precedent and in the absence of such specification of date, time and place, the period for making Talbe-Ishhad cannot be calculated with required accuracy?
ii) Whether the statement of a witness who did not disclose the actual site where the alleged information was passed nor could prove his credibility by claiming direct knowledge of sale itself but instead recorded hearsay account of little probative value is worthy of consideration?

Analysis: i) It is settled rule that mentioning of date, time and place in the plaint qua Talb-e-Muwathibat in a suit for preemption is a condition precedent in the context of subsection 3 of section 13 of the of the Punjab Preemption Act, 1991 and that in the absence of such specification of date, time and place, the period for making Talbe-Ishhad cannot be calculated with required accuracy.
ii) Be that as it may, the petitioner did not disclose the actual site where the alleged information was passed nor could the informer prove his credibility by claiming direct knowledge of the sale itself but instead recorded a hearsay account of little probative value. In these circumstances the courts below correctly observed that the statement of Irshad Ullah, real son of petitioner, was not worthy of consideration. Both the courts below, therefore, justifiably disbelieved the evidence and declared that Talb-e-Muwathibat could not be proved.

Conclusion: i) Mentioning of date, time and place in the plaint qua Talb-e-Muwathibat in a suit for preemption is a condition precedent and in the absence of such specification of date, time and place, the period for making Talbe-Ishhad cannot be calculated with required accuracy.
ii) The statement of a witness who did not disclose the actual site where the alleged information was passed nor could prove his credibility by claiming direct knowledge of sale itself but instead recorded hearsay account of little probative value is not worthy of consideration.

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30. **Lahore High Court**
Dr. Aqsa Rehman v. Govt. of Punjab, etc.
I.C.A. No. 03/2024
Mr. Justice Asim Hafeez, Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC781.pdf

Facts: Instant intra-court appeal is directed against decision, whereby learned Judge-in -Chambers dismissed appellant's Constitutional petition inter alia on the premise that factual controversy could not be decided and further observed that decision of offering retainership assignment was a transitory arrangement.

Issue: Whether it is mandatory that the appointment to permanent jobs should be advertised properly?

Analysis: In matters which involve public participation pertaining to pursuit of profession through permanent jobs or otherwise, the matter should be advertised properly inasmuch as Article 27 read with Articles 18, 25 and 2A of the Constitution of Islamic Republic of Pakistan, 1973, mandates that every citizen shall have the right to enter upon any lawful profession or occupation and to conduct any lawful trade or business.

Conclusion: In matters which involve public participation pertaining to pursuit of profession through permanent jobs or otherwise, the matter should be advertised properly.

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31. **Lahore High Court**
Falak Sher etc. v. Hashmat Bibi etc.
Writ Petition No.3631 of 2015/BWP
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC755.pdf

Facts: Through this Constitutional Petition, petitioners assailed the vires of judgments and memos of cost of the Courts below whereby their application under Section 12(2) C.P.C. was dismissed concurrently.

Issues: i) Whether an authorization given to a counsel by engaging him through Vakalatnama for doing certain acts with regard to the suit is unqualified and unrestricted?
ii) How the power of attorney is to be interpreted while deciding the case on the basis compromise on the statement of attorney?
iii) Whether the power of attorney (Vakalatnama) does confer impliedly the power of compromise on the counsel?
iv) What is the legal consequence of compromise or otherwise when power to do an act has not been specifically given to an attorney?
v) What is the duty of court while deciding a case on the statement of compromise given by the counsel?

Analysis: i) Both the Courts below dismissed the petitioners' application on the ground that it is settled principle of law that every lawyer engaged by a party has implied authority to enter into compromise even no specific power has been conferred upon him. No doubt, through engaging a counsel and by giving him Vakalatnama (power of attorney) a party gives him an authorization for doing certain acts with regard to the suit. But said authorization was not unqualified and unrestricted. The counsel has to work and to act within the scope of authority given to him. In this regard, the wording of the power of attorney should be strictly construed.
ii) Power of attorney must be construed strictly as giving only such authority as is conferred expressly or by necessary implication and it cannot empower beyond

what it really conveys and its contents must be taken into consideration as a whole. Power of attorney only gives that power which is specifically mentioned therein.

iii) The power of attorney (Vakalatnama) does not confer impliedly the power of compromise on the counsel or to make any statement to withdraw the suit or to get decree the suit, until and unless such powers have been specifically given to the attorney.

iv) There is hardly any doubt that if the power to do an act has not been specifically given to an attorney, such an act, whether compromise or otherwise, is of no legal consequence at the option of the concerned party.

v) Valuable rights of the parties are involved in the lis, therefore, while deciding the case on the basis of compromise, the Court should apply maximum care and caution to ascertain that whether the parties are agreed to the statement of compromise given by their counsel.

Conclusions: i) No, through engaging a counsel and by giving him Vakalatnama, a party gives him an authorization for doing certain acts with regard to the suit but said authorization is not unqualified and unrestricted.

ii) Power of attorney must be construed strictly as giving only such authority as is conferred expressly or by necessary implication and it cannot empower beyond what it really conveys and its contents must be taken into consideration as a whole.

iii) No, the power of attorney (Vakalatnama) does not confer impliedly the power of compromise on the counsel or to make any statement to withdraw the suit or to get decree the suit, until and unless such powers have been specifically given to the attorney.

iv) If the power to do an act has not been specifically given to an attorney, such an act, whether compromise or otherwise, is of no legal consequence at the option of the concerned party.

v) While deciding the case on the basis of compromise, the Court should apply maximum care and caution to ascertain that whether the parties are agreed to the statement of compromise given by their counsel.

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32. **Lahore High Court**
Mst. Haleema, etc. v. Executive Director, C & C Department Securities & Exchange Commission, etc.
Writ Petition No.8594 of 2016/BWP
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC823.pdf

Facts: Through this Constitution Petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, petitioners have assailed the vires of order passed by respondent No.1 whereby while exercising the power under Section 265 of the Companies Ordinance, 1984, a Chartered Accountant was appointed as Inspector for carrying out investigation into the affairs of the Company and to

give findings.

Issues: i) Whether the Commission under Section 265 of the Companies Ordinance,1984 has suo-motu powers to appoint an Inspector to carry out investigation into the affairs of the Company and to give findings?
ii) What procedure is to be followed in proceedings under Section 265 of the Companies Ordinance, 1984?
iii) What is the meaning of the expression "Disposed of accordingly"?

Analysis: i) The Commission under Section 265 (a) of the Ordinance could appoint Inspector subject to fulfillment of pre-conditions mentioned therein but such pre-conditions are not applicable to its suo-motu powers under Section 265 (b) of the Ordinance, to appoint Inspector. The Commission has only to satisfy itself, prima-facie, on the basis of the material placed before it, that case for investigation through an Inspector is called for. The matter, in fact, vests in the discretion of the Commission, to be decided after following the summary procedure.(…) The Authority has to only satisfy itself prima-facie, of course, on the basis of the material placed before it that a case for investigation through an Inspector is called for and it is for the Inspector to ascertain and determine the truth or otherwise of the allegation during the investigation to be conducted by him whereafter he has to submit report to the concerned Authority.
ii) The matter, in fact, vests in the discretion of the Commission, to be decided after following the summary procedure. In proceedings under Section 265 of the Ordinance, full-fledged inquiry in the form of a trial is not required to be held nor any formal evidence is to be recorded before passing the order under Section 265 of the Ordinance.
iii) The expression used by this Court "Disposed of accordingly" has a significant meaning. It means that the petition was disposed of in terms of the submission made by the learned counsel for the petitioner as narrated in para-1 and direction given in para-2 of the order. This Court in a case titled "MUHAMMAD SAQLAIN V. THE STATE, ETC." (2023 LHC 6699), observed as under:"So, in other words, the order "learned counsel for the petitioner wishes to withdraw this petition after arguments. Disposed of accordingly" means that subject petition terminated, settled, ended, concluded or closed as desired by the learned counsel for the petitioner after arguments and consideration of the merits of the case."

Conclusions: i) The Commission under Section 265 (b) of the Companies Ordinance,1984 has suo-motu powers to appoint an Inspector to carry out investigation into the affairs of the Company and to give findings.
ii) In proceedings under Section 265 of the Ordinance, summary procedure is to be followed as neither full-fledged inquiry in the form of a trial is required to be held nor any formal evidence is to be recorded before passing the order under Section 265 of the Ordinance.
iii) The expression "Disposed of accordingly" means that the petition was disposed of in terms of the submission made by the learned counsel for the

petitioner and subject petition terminated, settled, ended, concluded, or closed as desired by the learned counsel for the petitioner after arguments and consideration of the merits of the case.

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33. **Lahore High Court**
Muhammad Asif v. The State, etc.
Criminal Revision No.12454 of 2022
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC866.pdf

Facts: Through this Criminal Revision under Sections 435 & 439 of Cr.P.C., petitioner being accused of case FIR registered under section 302 PPC has challenged the vires of order passed by Additional Sessions Judge whereby co-accused was tendered pardon under section 338 of Cr.P.C. to become approver against his co-accused (present petitioner).

Issues: i) Whether is it mandatory for the court or magistrate to record reasons or observe legal formalities while declaring the accused as an approver and what is procedure to tender pardon to an accused?
ii) Whether consent of the accused is mandatory before declaring him as an approver or tendering him pardon?
iii) Whether pardon can be tendered to an accused in cases involving in an offence relating to hurt or qatl without permission of the victim or, as the case may be, of the heirs of the victim?
iv) Whether is it mandatory to keep the accused in custody until the trial is concluded who has been tendered pardon?
v) Whether is it mandatory for the court to take the prosecution on board before tendering pardon to an accused?
vi) What are the pre-requisites to record confessions if more than one person turns approver in one case?

Analysis: i) The sections 337 & 338 Cr.P.C deal separately with the situations of tendering pardon by the Officer Incharge of the prosecution as well as the Court. Section 337 of Cr.P.C. deals with the situation when the case is in the investigation or inquiry or pending trial before a Magistrate, whereas section 338 of Cr.P.C. meets the situation when the trial is pending before the Court of Session or High Court. Section 337 Cr.P.C. talks about the condition and recording of reasons for tendering pardon to the accused. Sub-section (1) of section 337 Cr.P.C… And subsection (1-A) of such section makes it mandatory by using the word "shall" for the Magistrate to record his reasons for so doing, and shall, on application made by the accused, furnish him with a copy of such record. Primarily, an offer to tender pardon to the accused during the investigation is the function of police as mentioned in Rule 25.29 of the Police Rules, 1934 but they could not offer it except as mentioned in sub-rule (2) of above Rule…It was the practice that once it is decided to offer a pardon to the accused, he must had been taken to the Magistrate in order to tender the same and Magistrate under sub-rule 2(c) of

above Rule could make enquiries as to the circumstances leading up to the confession, and police officers shall invariably furnish, so far as is in their power, information required of them in this respect. Later by virtue of amendment in section 337 Cr.P.C. through Ordinance XXXVII of 2001, the power was switched over to officer incharge of the prosecution in the district. Thus, on the same analogy, as per section 337 of Cr.P.C. he is required to observe the condition and record the reasons for so doing. After promulgation of Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006, a Code of conduct for prosecutors was issued under section 17 of the Act ibid; Para No. 14 of said Code of conduct refers the functions of District Public Prosecutor in this respect… During the course of investigation if the accused accepts the offer, his status from an accused is transposed to that of a witness and he shall be brought before the Magistrate for recording of his statement (not the confession) on oath u/s 164 of Cr.P.C., and copy of such statement shall be supplied to co-accused under section 241-A or 265-C Cr.P.C. as the case may be before the commencement of trial. If such a power is exercised at the stage when trial is pending, then after fulfilling the condition and recording of reasons, if the accused accepts the offer, Magistrate shall examine him as a witness during the trial but before that he shall be taken into custody till the conclusion of trial as required by sub-section (3) of Section 337 Cr.P.C.; sub-rule 2 (f) of Rule 25.29 of Police Rules, 1934 and Rule8 of Chapter 14 of High Court Rules & Orders, Volume-III.

ii) The proposition in this case relates to a stage as enumerated in section 338 of Cr.P.C., therefore, not only the officer incharge of the prosecution but the Court can tender pardon to the accused at any stage of the trial before the judgment is passed with a view to obtaining evidence… but before that it was essential that accused should have volunteered to become approver in response to a request made by the complainant or the Court. Though application of the complainant states that co-accused is ready to become approver but his consent in black and white is not available in the record. Similar is the situation when Court has also not taken his consent before tendering him pardon. In this view of the matter, order passed by learned Additional Sessions Judge one-sidedly considering that accused would be a useful witness as an approver is opposed to Constitutional protection as ordained under Article 13 of the Constitution of the Islamic republic of Pakistan, 1973… The most important of all considerations is the logic applied by the Court to use an accused as approver, at the altar of absolving him of his criminal liability against the sentiments of aggrieved party, for procuring conviction in order to dispense justice. Thus, reasons must be outlined by the Court before frame of mind to tender pardon to an accused…

iii) Likewise, section 338 of Cr.P.C requires that no person shall be tendered pardon who is involved in an offence relating to hurt or qatl without permission of the victim or, as the case may be, of the heirs of the victim.

iv) It is also the requirement of law that when an accused is tendered pardon, he must be kept in custody until the trial is concluded and Officer Incharge of prosecution certifies that accused has made full and true disclosure of the whole

of the circumstances so as to prevent his trial as an accused under section 339/339A of Cr.P.C., but in this case accused was not taken into custody which action is in violation of sub-section (3) of Section 337 Cr.P.C.; sub-rule 2 (f) of Rule 25.29 of Police Rules, 1934 and Rule-8 of Chapter 14 of High Court Rules & Orders, Volume-III...

v) In this case Court has not taken the prosecution on board before tendering the pardon to the accused which is an illegality because though Court has power to tender pardon to any person but the Court can have no interest whatsoever in the outcome nor to decide for prosecution whether particular evidence is required or not to ensure the conviction of the accused. That is the prosecution's job…

vi) While acting with due propriety in jurisdiction Court must bear in the mind that interests of accused are just as important as those of the prosecution. No procedure or action can be in the interest of justice if it is prejudicial to an accused. There are also matters of public policy to consider. Judge must know the nature of the evidence the person seeking conditional pardon is likely to give, the nature of his complicity and degree of his culpability in relation to the offence and in relation to co-accused. Case reported as "Jasbir Singh Verus Vipin Kumar Jaggi" (2001 AIR (SC) 2734) is referred in this respect. Even it is possible that in a case more than one person turns approver or the prosecution wants to use them, then according to sub-rule 2 (g) of Rule 25.29 of Police Rules, 1934, their confessions shall, if possible, be recorded by different magistrates and they shall not be allowed to meet one another till their evidence has been recorded in Court.

Conclusion: i) It is mandatory for the court or magistrate to record reasons or observe legal formalities while declaring the accused as an approver. See under analysis no. i.

ii) Consent of the accused is mandatory before declaring him as an approver or tendering him pardon.

iii) No person can be tendered pardon who is involved in an offence relating to hurt or qatl without permission of the victim or, as the case may be, of the heirs of the victim.

iv) It is mandatory to keep the accused in custody until the trial is concluded who has been tendered pardon.

v) It is mandatory for the court to take the prosecution on board before tendering pardon to an accused.

vi) See above in analysis clause no. vi.

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34. **Lahore High Court**
M/S NWEPDI-TEPC-UCC (JV) v. National Transmission & Dispatch Co. Ltd. & 04 others
W. P. No. 685 / 2023
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC942.pdf

Facts: This constitutional petition brings a challenge to Orders passed by respondents No. 2 and 4 respectively and seeks a direction to the Respondents to the effect that

they are not entitled to forfeit bank guarantee tendered by the Petitioner as bid security.

Issues: i) Whether a Constitutional Petition under Article 199 of the Constitution is maintainable in view of Rule 48(7) of the Public Procurement Rules, 2004 which provides remedy of appeal and is subject to depositing the prescribed fee?
ii) Whether in the interpretation of documents, ambiguities are to be construed unfavorably to the drafter?
iii) Whether the bid of the bidder can be rejected and his bid security is liable to be forfeited only if he does not accept the correct amount of bid?

Analysis: i) Rule 48(7) of the Rules, 2004 provides the remedy of appeal before the Authority against the decision of GRC. However, the remedy of appeal under Rule 48(7) of the Rules, 2004 is subject to depositing the prescribed fee. In the instant case, requiring the Petitioner to deposit a heavy amount of fee, who is striving to release its bid security, would definitely be harsh and onerous when the procurement process had been scrapped and even the decision of GRC was completely non-speaking. Under these circumstances, the Petitioner cannot be compelled to seek redressal of its grievance within the regulatory framework by way of appeal….. It, therefore, follows that normal rule is that when an alternate remedy is available to a party, it is required to pursue that remedy and the right to invoke constitutional jurisdiction of this Court is not available. However, where it is established that the available alternate remedy is not efficacious, the existence of such remedy is not an absolute bar to invoke the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

ii) It is importantly noted here that although Clause IB 26.2(e) reproduced above states that if the bidder does not accept the corrected amount of bid, his bid will be rejected and his bid security forfeited according to Clause IB 15.7 yet the latter Clause does not allow forfeiture of bid security under the former Clause. Hence, it is aptly evident that the bidding documents were hit by the doctrine of Contra Proferentem which, according to Black's Law Dictionary (Tenth Edition), means, "in the interpretation of documents, ambiguities are to be construed unfavorably to the drafter". It is also termed as „ambiguity doctrine'. Thus, it is apparent that the bidding documents were ambiguous and as per Clause IB 15.7, the bid security could not have been forfeited pursuant to Clause IB 26.2(e) for omission to mention the said Clause therein.

iii) Notwithstanding the fact that Clause IB 26.2(e) of Section 1- „Instructions to Bidders" could not have been invoked in terms of Clause IB 15.7 yet under the former Clause, bid of the Petitioner could have been rejected and his bid security was liable to be forfeited only if the bidder does not accept the corrected amount of bid. This necessitates to examine if the Petitioner had refused to accept the correct amount of bid or arithmetic corrections in his bid price as desired by NTDC. Letter dated 12.10.2022 depicts that the Petitioner with reference to price

post-bid clarification No. 3 was required to confirm certain queries which were duly responded to as depicted from communication dated 14.10.2022….. From bare perusal of the above reply, it is unequivocally clear that irrespective of the fact that the aforesaid post bid clarifications were arithmetic errors or typographical errors yet the clarifications sought by Respondent No. 3 on behalf of NTDC were accepted by the Petitioner and that the total bid price remained intact. Further, by no stretch of imagination, it could be concluded that the Petitioner had refused to accept the arithmetic corrections according to the criteria for such corrections laid down in Clause IB 26.2. Therefore, the impugned Order dated 30.11.2022 qua rejection of bid of the Petitioner and forfeiture of its bid security is based on erroneous assumption that the Petitioner had refused to accept the arithmetic errors, as such, the decision to forfeit bid security was unlawful.

Conclusion: i) A Constitutional Petition under Article 199 of the Constitution is maintainable in view of Rule 48(7) of the Public Procurement Rules, 2004 which provides remedy of appeal and is subject to depositing the prescribed fee.
ii) In the interpretation of documents, ambiguities are to be construed unfavorably to the drafter.
iii) The bid of the bidder can be rejected and his bid security is liable to be forfeited only if he does not accept the correct amount of bid.

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35. **Lahore High Court**
Muhammad Ali Khan v. Additional District Judge etc.
Writ Petition No. 15918/2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC795.pdf

Facts: The present constitutional petition is directed against the impugned judgments and decrees of the Courts below passed in favour of the respondent, inter alia, in respect of dower recorded in column No.16 of her nikahnama with the petitioner.

Issues: i) Whether the presumption of truth is attached to a registered nikahnama and how the same can be rebutted?
ii) What is the meaning of legal maxim "Allegans Contraria Non Est Audiendus"?
iii) Whether the obligation of husband regarding payment of dower of immovable property gets discharged upon mere transfer of ownership of dower property in the name of his wife without delivering its possession?
iv) Whether the husband after fixation of dower in a marriage contract can resile from the same?

Analysis: i) Needless to mention that presumption of truth is attached to a registered nikahnama and the same can only be rebutted if a defendant (groom/petitioner in the instant case) puts forth some cogent evidence.
ii) As a matter of fact, the case of the petitioner squarely falls within clutches of the legal maxim "Allegans Contraria Non Est Audiendus" (A person who alleges things contradictory to each other is not to be heard) disentitling the petitioner to

any relief.

iii) Suffice to observe that a wife has a right to claim the dower and if such dower is in the form of immovable property, she is not only entitled to transfer of said immovable property in her name but also to utilize the same. Failure on part of the petitioner to handover possession of the property, transferred in the name of the respondent, pursuant to the impugned decree means that the said resource (property/dower of the respondent) would remain in the hands of the petitioner and the respondent has no control over how and when (and/or upon whom) it could be spent. Therefore, this Court is of the opinion that unless possession of the immovable property constituting dower of a wife is given to her, and/or the share of the produce thereof is paid, in essence, the obligation to pay the dower has not been discharged by the husband.

iv) Once the dower is fixed, the husband in a marriage contract cannot resile from the same while observing that our society is male dominating and the men in discharge of their matrimonial duties often forget the commands of the religion when it comes to their own obligations and are more concerned about their rights

Conclusions: i) Presumption of truth is attached to a registered nikahnama and the same can only be rebutted through some cogent evidence.

ii) The legal maxim "Allegans Contraria Non Est Audiendus" means a person who alleges things contradictory to each other is not to be heard.

iii) Unless possession of the immovable property constituting dower of a wife is given to her, and/or the share of the produce thereof is paid, in essence, the obligation to pay the dower has not been discharged by the husband.

iv) Once the dower is fixed, the husband in a marriage contract cannot resile from the same.

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36. **Lahore High Court**
Muhammad Shafique v Director General, Punjab Emergency Service, Lahore etc.
W.P No.6339/2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC874.pdf

Facts: The petitioner assailed the order of the respondents, wherein he was removed from the service on account of absence from duty. Hence, this constitutional petition.

Issues: i) Whether absence without any application or prior permission may amount to unauthorized absence?

ii) What is meant by absence from duty?

iii) How the departmental authorities deal the cases of unauthorized absence from the duty?

iv) Whether the result of criminal proceedings have bearing on the departmental proceedings?

Analysis: i) Absence without any application or prior permission may amount to unauthorized absence, but it does not always mean that the same is willful. If the absence is the result of compelling circumstances under which it was not possible for an employee to report or perform duty, such absence cannot be held to be willful. Such compelling circumstances due to which an employee might have absented himself is a matter to be considered on case to case basis. In all such cases where absence is not willful, the employee cannot be held guilty of failure of devotion to the duty or behaviour unbecoming of a government servant.

ii) Absence from duty exhibits lack of devotion on part of an employee towards the duty leading to indiscipline in the work culture of an organization and such act cannot be countenanced. However, at the same time, court cannot lose sight of the fact that a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before drawing the conclusion that an employee is guilty of misconduct in general and imposing major punishment of removal from service in particular.

iii) Unauthorized absence from the duty entails two options before the departmental authorities. Firstly, that unauthorized absence may be condoned by treating it as ex-post facto leave if the explanation offered by the accused employee is found to be justified; and secondly, if the employee does not appear or the explanation offered is found not to be satisfactory, the disciplinary proceedings may be initiated against such employee that may result in imposition of penalty, which may range from a major penalty of dismissal or removal from service to a minor penalty of censure or withholding of increment for a specific period, mainly depending upon number of factors, which inter alia, include the nature of service, the position (duty) of the employee in that service, the period of absence and the cause for the absence. Thus, it becomes clear that where an absent employee comes back and seeks to join his duty, the departmental authorities are obligated to determine whether the unauthorized absence was willful or was the result of such compelling circumstances which were beyond the control of the employee.

iv) There is no cavil to the proposition of law that the result of criminal proceedings cannot have bearing on the departmental proceedings but this proposition of law is relevant where departmental proceedings and criminal proceedings are based upon same occurrence and mere exoneration in criminal proceedings do not absolve the delinquent official from the departmental proceedings as both involve different standards of proof.

Conclusion: i) Absence without any application or prior permission may amount to unauthorized absence, but it does not always mean that the same is willful.

ii) Absence from duty exhibits lack of devotion on part of an employee towards the duty leading to indiscipline in the work culture of an organization and such act cannot be countenanced.

iii) Unauthorized absence from the duty entails two options before the departmental authorities. Firstly, that unauthorized absence may be condoned by treating it as ex-post facto leave if the explanation offered by the accused employee is found to be justified; and secondly, if the employee does not appear or the explanation offered is found not to be satisfactory, the disciplinary proceedings may be initiated against such employee that may result in imposition of penalty.
iv) The result of criminal proceedings cannot have bearing on the departmental proceedings.

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37. **Lahore High Court**
Mujtaba Saleem Butt v. Incharge Investigation, etc.
Crl. Misc. No. 10162-H/2024
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2024LHC771.pdf

Facts: Through this Habeas Petition filed under Section 491 of the Code of Criminal Procedure, 1898, the petitioner seeks the recovery of his son (*'the Detenu'*). In pursuance of the order of this Court, the Detenu was produced before the Court by Respondent No. 2, Sub-Inspector of Anti Vehicle Lifting Squad. It has been stated by Respondent No.2 that the Detenu was arrested in connection with an FIR initially registered under Section 381-A of Pakistan Penal Code, 1860 with another Police Station.

Issues: i) What is the requirement of Rule 26.21(6) of The Punjab Police Rules, 1934?
ii) What is the effect of approach of allowing law enforcement agencies and prosecution to add new offences and doing prosecutorial maneuvers and arrest the accused by adding offences after he was bailed out?
iii) Whether addition of offences after the grant of bail can serve as a *carte blanche* for investigating agencies to circumvent the due process rights of the accused.
iv) Whether principle of not re-arresting the accused on addition of offences without first seeking cancellation of bail can be extended to pre-arrest bail as well?

Analysis: i) …The above-provided Rule explicitly requires that in cases where an accused has already been released on bail for certain charges, any intention to arrest the accused for additional charges must be accompanied by an application for the cancellation of bail, presented before the competent court as envisaged under Section 497(5) of the Code, which shall be decided after issuance of notice to the accused… The legal position that emerges from the above discussion is that once an accused person has been granted bail, he cannot be arrested by the investigating agency without seeking cancellation of bail granted by the court of competent jurisdiction by way of filing an application under Section 497(5) of the Code. Rule 26.21(6) of the Rules mandates that any such action must be taken

with explicit permission of the Court, ensuring judicial oversight, and safeguarding the rights of the accused.

ii) Moreover, this approach opens Pandora box of legal uncertainties, where the grant of bail could be rendered nugatory by the subsequent prosecutorial maneuvers. It establishes a precedent that could lead to rampant abuse of power, allowing for the detention of individuals ad infinitum, by the simple device of adding new offences against them. The prospect of such unbridled discretion vested in the investigating agency is antithetical to the rule of law and the principles of justice and equity. This practice would not only undermine the sanctity and finality of judicial decisions but also endanger the foundational principles of our legal system that aim to protect individual liberties against arbitrary detention. Such an approach would give law enforcement agencies a de facto license to frustrate judicial orders, enabling them to detain any bailed-out accused at will by the simple expedient of adding new charges.

iii) Therefore, it is incumbent upon this Court to staunchly oppose such practices that imperil the liberty of the citizenry and detract from the integrity of the judicial process. The arrest of an individual granted bail by a Court of competent jurisdiction, without first seeking the cancellation of said bail on legitimate grounds, is an affront to the procedural safeguards designed to protect against the misuse of state power. The addition of offences after the grant of bail cannot serve as a *carte blanche* for investigating agencies to circumvent the due process rights of the accused.

iv) The principle of not re-arresting a bailed-out accused without seeking cancellation of bail aligns with the broader legal principles of fairness, predictability, and respect for judicial decisions. Extending this principle to pre-arrest bail cases does not represent a radical departure from established legal norms but rather an affirmation of the law's inherent values. It acknowledges that the rationale preventing arbitrary re-arrest post-bail applies with equal force to those admitted to pre-arrest bail, as both scenarios involve individuals who, in the eyes of the law, should not be detained without compelling, judicially scrutinized reasons.

Conclusion: i) Requirement of Rule 26.21(6) of The Punjab Police Rules, 1934 is that where an accused has already been released on bail for certain charges, any intention to arrest the accused for additional charges must be accompanied by an application for the cancellation of bail and re-arrest should be with the permission of the court.

ii) It establishes a precedent that could lead to rampant abuse of power, allowing for the detention of individuals ad infinitum, by the simple device of adding new offences against them and also gives law enforcement agencies a de facto license to frustrate judicial orders.

iii) No, the addition of offences after the grant of bail cannot serve as a *carte blanche (complete freedom to act as one wishes)* for investigating agencies to circumvent the due process rights of the accused.

iv) The principle of not re-arresting a bailed-out accused without seeking cancellation of bail aligns and extending this principle to pre-arrest bail cases does not represent a radical departure from established legal norms but rather an affirmation of the law's inherent values.

LATEST LEGISLATION / AMENDMENTS

1. Amendment in "The Lahore Development Authority Private Housing Schemes Rules,2014" in Rules 36, 10, 12, 13, 31, 39, 40, 46, 49, 51 and 54 vide Notification No.SO (H-II)3-11/2023 published in the official Punjab Gazette through Notification No.23 of 2024 dated 16.02.2024.
2. Amendment in "The Punjab Government Rules of Business, 2011" in the 2nd schedule, under the heading "INDUSTRIES, COMMERCE, INVESTMENT AND SKILLS DEVELOPMENT DEPARTMENT" vide Notification No.SO (Cab-I)2-53/1988 (ROB) published in the official Punjab Gazette through Notification No.26of 2024 dated 20.02.2024.
3. Vide Notification No.27 of 2024 dated 21.02.2024 published in the official Punjab Gazette, the Governor of the Punjab has published Draft of Rules under the title of "the Punjab Drug Rules, 2007" following public notice seeking objections and suggestions.
4. Amendment in "The Price Control and Prevention of Profiteering and Hoarding Act, 1977" through insertion of section 6A vide Notification No. F. 9(53)/2023-Legis. published in the official Punjab Gazette through Act No. LXIV of 2023 dated 14.09.2023.
5. Vide Act No. LXV of 2023 dated 131.10.2023 published in the official Pakistan Gazette, The Majlis-e-Shoora (Parliament) after assent of the President passed "The Federal Prosecution Service Act, 2023".
6. Vide Ordinance No. VIII of 2023 dated 27.12.2023 published in the official Pakistan Gazette, the President has promulgated "The Establishment of Telecommunication Appellate Tribunal Ordinance, 2023".
7. Vide Ordinance No. I of 2024 dated 14.02.2024 published in the official Pakistan Gazette, the President has promulgated "The Apostille Ordinance,2023".
8. Vide Ordinance No. II of 2024 dated 15.02.2024 published in the official Pakistan Gazette, the President has promulgated "The Seed (Amendment) Ordinance,2024" in connection with amendments in the preamble, sections 2, 3, 4, 6, 10, 12, 16, 22, 23, 24, 25, 29 and 30 of Act XXIX of 1976, along with insertion of New sections 3A, 3B, 3C, 3D, 3E, 4A, 24A, 24B, 24c and 30 in the Act XXIX of 1976.
9. Vide Ordinance No. III of 2024 dated 16.02.2024 published in the official Pakistan Gazette, the President has promulgated "The Indus River System Authority (Amendment) Ordinance, 2024" in connection with amendments in section 2, 4, 5, 6, 7, 8, 10, 12, 14, 19, 22 of Act XXII of 1992, along with

insertion of New sections 8A, 10A,10B, 3C, 3D, 3E, 4A, 24A, 24B, 24c and 30 in the Act XXII of 1992.

10. Vide Ordinance No. IV of 2024 dated 16.02.2024 published in the official Pakistan Gazette, the President has promulgated "The Cannabis Control and Regulatory Authority Ordinance, 2024".

SELECTED ARTICLES

1. MANUPATRA
https://articles.manupatra.com/article-details/THE-CHANGING-FACE-OF-FREE-SPEECH-A-STUDY-OF-ARTICLE-19-IN-THE-DIGITAL-AGE-IN-INDIA

The Changing Face of Free Speech: A Study of Article 19 In the Digital Age in India by Tushar Sharma

In the digital age, India's narrative of free speech has encountered both evolution and turbulence. Rooted in the democratic ethos, Article 19 of the Indian Constitution safeguards this freedom, reflecting the country's commitment to upholding a citizen's right to express. With the proliferation of online platforms—ranging from social media to news portals—the citizens have found dynamic avenues to articulate their viewpoints. As Nelson Mandela once said, "To be free is not merely to cast off one's chains but to live in a way that respects and enhances the freedom of others." However, this freedom has its pitfalls in the digital realm: the rapid dissemination of misinformation and the perils of divisive rhetoric. This research delves into the protective umbrella of Article 19 of the Constitution, emphasizing its pivotal role in safeguarding expression. The current landscape necessitates a balance, a careful navigation between the unrestricted flow of opinions and the dangers of digital misinformation. Issues of censorship, both governmental and self-imposed, further complicate this balance. As the world envisages the future of India's digital discourse, it becomes paramount to ensure that the sanctity of free speech, as championed by Article 19, is preserved, yet responsibly exercised. Conclusively, the paper underscores the imperative of navigating the nuanced balance between unbridled digital expression and the responsibilities accompanying it, all through the lens of Article 19.

2. MANUPATRA
https://articles.manupatra.com/article-details/THE-ROLE-OF-ADR-IN-RESOLVING-DISPUTES-RELATED-TO-MEDICAL-NEGLIGENCE

The Role of Adr In Resolving Disputes Related to Medical Negligence by Divyansh Singh Sisodiya, Satyam Dwivedi

In today's fast-paced world, a rapid rise in instances of Medical Negligence has been observed since the last decade. Cases of Medical Negligence happen when healthcare practitioners like doctors, and nurses, or when any hospital deviates from its standard duty of care, the consequence of which results in harm and injury to a patient. Due to the failure of medical professionals to exercise due care, individuals and their families may pursue recompense for the injuries suffered as a result of the misconduct and negligence exhibited by doctors, nurses, or other healthcare practitioners. The disputes related to medical negligence are generally settled by the traditional justice system i.e., Litigation

which involves appearing before the Hon'ble Court and having a Judge decide on a particular dispute in question. In light of the protracted and costly nature of our nation's legal system, which often yields results that may not meet the parties' desired outcomes, alternative dispute resolution (ADR) mechanisms, including arbitration and mediation, have emerged as prominent approaches for resolving medical malpractice disputes involving healthcare practitioners. These ADR procedures are currently considered as feasible alternatives to the extended and expensive litigation procedure. ADR mechanism enables disputing parties to let them resolve their disagreements outside the court in a more cooperative as well as efficient manner. A mediator is a neutral third party that encourages conversation between opposing parties and eventually assists them in reaching an equitable settlement agreed upon by both disputing parties. In contrast, a neutral third person, knownas an arbitrator, participates in the arbitration court and listens to the evidence of the parties engaged in the dispute before making a binding judgment on the case's conclusion.

3. MANUPATRA

https://articles.manupatra.com/article-details/THE-IMPACT-OF-POLITICAL-INFLUENCE-AND-POWER-ON-THE-INDIAN-JUDICIARY

The Impact of Political Influence and Power on The Indian Judiciary by Aayush Kumar, Anirudh Singh

The growing influence and power of political entities have presented significant obstacles to the autonomy of India's judiciary. The Principles on the Independence of the Judiciary emphasize the significance of impartiality in rendering judgments, wherein decisions are made only on the basis of factual evidence and legal principles, without any undue limitations or inappropriate influences. The principle of separation of powers, which ensures the independence of the judiciary, is particularly highlighted in terms of the judiciary's role and its relationship with other branches of government. This research provides a critical analysis of the influence of political factors and power dynamics on the Indian Judiciary. It examines the complex connection between political forces and judicial rulings, investigating situations when the judiciary could be influenced by external pressures. Further, the research offers a comprehensive examination of how the legislative and executive branches of government utilize statutory provisions to reverse judicial rulings. It also explores the significance of the Separation of Powers concept within the Indian context. Moreover, it provides illustrations of cases in which such encroachment of authority has taken place inside the Judiciary, emphasizing the difficulties encountered by the Indian Judiciary in preserving its autonomy and probity. It emphasizes the need to protect the autonomy of the judiciary in a democratic society, while also highlighting the difficulties encountered while trying to act as a fair and unbiased judge. This research makes a valuable contribution to the wider academic discussion around the function of the Judiciary in democratic government and the vital responsibility of safeguarding its independence and integrity.

4. ACADEMIC.OUP

https://academic.oup.com/arbitration/advance-article-abstract/doi/10.1093/arbint/aiae010/7629016?redirectedFrom=fulltext

The Use of Technology in Case Management in International Investment Arbitration: A Realistic Approach by Ahmet Cemil Yildirim

Investment arbitration, with its unique demands for transparency due to the public interest, is an especially promising arena for AI technologies. This transparency push and the judicialization of processes make investment arbitration increasingly amenable to technological innovations. However, the full potential of artificial intelligence (AI) in streamlining international investment arbitration case management remains largely untapped. The key to unlocking this potential lies in digitalization of data and procedures, and inter-institutional collaboration to share data. The literature regarding the use of technology in international arbitration mainly focuses on AI and its potential use in international arbitration in the future. While much of this literature speculates about the future, a holistic understanding of the present state of technology in international investment arbitration is crucial. This article spotlights the advancements achievable in case management in international investment arbitration using today's available technologies. The current state of AI technology is primed for handling straightforward procedural tasks. Yet, these modest tasks occupy significant bandwidth in the agendas of arbitral institutions and tribunals. Once comprehensive digitalization is achieved, and AI technologies are integrated into international investment arbitration case management adeptly, that will be a significant step towards more expeditious and cost-effective arbitration procedures.

5. ACADEMIC.OUP

https://academic.oup.com/ojls/advance-article/doi/10.1093/ojls/gqae005/7629062?searchresult=1

The Resurgence of Standing in Judicial Review by Joanna Bell

It is now commonplace for courts to remark that standing to seek judicial review is 'context-sensitive'. The questions of how the courts adapt standing to context, and whether they do so appropriately, have, however, received remarkably little scholarly and judicial attention. This is perhaps because, until recently, there has been relatively little in the case law to spark scholarly interest. Standing, however, is in the midst of a resurgence. This article makes use of a distinction between three types of judicial review case—challenges to (i) favourable targeted, (ii) unfavourable targeted and (iii) non-targeted decisions—as a mode through which to explore the growing body of standing case law. In doing so, it both seeks to further understanding of how courts determine what constitutes a 'sufficient interest' and to highlight areas of the law in need of clarification or reconsideration.

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FORTNIGHTLY CASE LAW BULLETIN

(16-03-2024 to 31-03-2024)

A Summary of Latest Judgments Delivered by the Supreme Court of Pakistan & Lahore High Court, Legislation/Amendment in Legislation and important Articles

Prepared & Published by the Research Centre Lahore High Court

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Shaukat Aziz Siddiqui v. Federation of Pakistan, Secretary Ministry of Law and Justice and another
Constitution Petition No. 76 of 2018
Islamabad Bar Association through its General Secretary v. Federation of Pakistan, Secretary Ministry of Law and Justice and others
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Constitution Petition No. 2 of 2021
Mr. Justice Qazi Faez Isa, CJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/const.p._76_2018.pdf

Facts: The petitioner along with other petitioners assailed the opinion of The Supreme Judicial Council trough this constitution petition filed under Article 184(3) of the Constitution, wherein the petitioner no.1 was found guilty of misconduct and opined that he be removed from his office as judge of High Court under Article 209(6) of the Constitution.

Issues: i) Whether removal of a Judge under clause (6) of Article 209 can be called in question in Court?
ii) What are the requirements of Article 209 of the Constitution with regard to whether a judge is guilty of misconduct?
iii) Whether the Fundamental Rights include the right to a fair trial and due process?
iv) Whether the Fundamental Rights of the people require protection from the excess of the executive?
v) Whether the judges who fall within the ambit of Article 209 of the Constitution are sacred cows?
vi) Whether the Constitution guarantees that a Judge's tenure is secure?
vii) Whether removing a judge without inquiry receives a severe setback?
viii) Whether the code of conduct prohibits a judge from addressing a Bar Association or even a public gathering?
ix) Whether Judges are to be adjudged by unspecified, arbitrary and vague notions of misconduct?

Analysis: i) The removal of a Judge under clause (6) of Article 209 shall not be called in question in Court and the bar contained in Article 211 does not protect acts which are mala fide or coram non judice or were acts taken without jurisdiction, and in such circumstances the Supreme Court has exercised jurisdiction.
ii) Article 209(5) of the Constitution requires that the SJC has to inquire into the matter with regard to whether a judge is guilty of misconduct. Article 209(6) commences by stating that, if after inquiring into the matter, and concludes by stating that, if the SJC is of the opinion that a Judge has been guilty of

misconduct he should be removed from office. However, Article 209(7) of the Constitution simultaneously safeguards the tenure of a Judge by stipulating that, A judge of the Supreme Court or of a High Court shall not be removed from office except as provided by this Article, including clauses (5) and (6), which require that an inquiry has to be conducted by the SJC before determining whether a Judge is guilty of misconduct. Article 195 of the Constitution renders further protection to a Judge by stating that a Judge cannot be removed from office except 'in accordance with the Constitution', and the Constitution does not permit the removal of a Judge from office without first holding an inquiry with regard to any alleged misconduct.

iii) The Fundamental Rights enshrined in the Constitution include the right to a fair trial and due process and all citizens, including Judges, must be dealt with in accordance therewith.

iv) The Fundamental Rights of the people require protection from the excess of the executive and the vested Interest, both commercial and political. In order to safeguard the Fundamental Rights of the people guaranteed under the Constitution, the Independence of Judiciary obviously must be insulated from the onslaught of the Executive and such vested Interests, who are past masters at Institutional Capture. Thus, the security of tenure of Judges more so those of the Superior Courts is imperative and, therefore, adequate safeguards in this behalf are provided including by enacting what appears to be a rather cumbersome and strict process for their removal. This cardinal principle is reflected in the Constitutional dispensation of almost all Democratic countries peopled by citizens and not subjects. The exceptions, in this behalf, are almost always found in countries either under Military Dictatorships or ruled by Fascist regimes. The said safeguard is reflected in our Constitution under Article 209. It is no coincidence that each and every time a Military Dictatorship is imposed in Pakistan and a Constitutional deviation occurs an essential feature of the new dispersion is the promulgation of some Pseudo Legal Instrument enabling the removal of Judges by the Executive without the necessity of resorting to the provisions of Article 209 of the Constitution.

v) It does not mean that those falling within the ambit of Article 209 of the Constitution are sacred cows beyond the pale of accountability. If a person looses or abandons the necessary attributes of a Judge of integrity, probity, legal expertise and mental balance then he is not entitled to any security of tenure and must be weeded out post-haste with surgical precision through due process in terms of Article 209 of the Constitution. Such removal is necessary to preserve the Independence of Judiciary. Accountability strengthens rather than weakens institutions.

vi) The Constitution guarantees that a Judge's tenure is secure because it makes for an independent Judiciary while enabling a Judge to be removed from office if he commits misconduct, after providing him a fair trial and due process, as mandated by Article 10A of the Constitution.

vii) If a Judge can be removed without even inquiring into the allegations levelled

by or against the Judge the independence of the Judiciary receives a severe setback. The removal of a Judge is undoubtedly a matter of public importance and of public interest. And, an independent Judiciary is the foundation on which all the Fundamental Rights enshrined in the Constitution rest. Without an independent Judiciary Fundamental Rights are jeopardized.

viii) The Code of Conduct issued by the SJC does not prohibit a judge from addressing a bar association or even a public gathering, neither does any law.

ix) If Judges are to be adjudged by unspecified, arbitrary and vague notions of what constitutes appropriate traits and patterns of behavior of a Judge and the SJC is to consider whether an alleged conduct of a Judge is offensive to the qualities and behavior traditionally expected of a Judge it would place a Judge at the complete mercy of those who constitute the SJC.

Conclusion: i) The removal of a Judge under clause (6) of Article 209 shall not be called in question in Court.

ii) Article 209(5) of the Constitution requires that the SJC has to inquire into the matter with regard to whether a judge is guilty of misconduct.

iii) The Fundamental Rights enshrined in the Constitution include the right to a fair trial and due process.

iv) The Fundamental Rights of the people require protection from the excess of the executive and the vested interest, both commercial and political.

v) It does not mean that those falling within the ambit of Article 209 of the Constitution are sacred cows beyond the pale of accountability.

vi) The Constitution guarantees that a Judge's tenure is secure because it makes for an independent Judiciary.

vii) If a Judge can be removed without even inquiring into the allegations levelled by or against the Judge, the independence of the Judiciary receives a severe setback.

viii) The Code of Conduct issued by the SJC does not prohibit a judge from addressing a Bar Association or even a public gathering.

ix) If Judges are to be adjudged by unspecified, arbitrary and vague notions of misconduct, it would place a Judge at the complete mercy of those who constitute the SJC.

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2. **Supreme Court of Pakistan**
The Secretary School Education, Government of the Punjab, Lahore etc.v. Riaz Ahmed and others
Civil Petitions No.928-L to 930-L of 2021
Mr. Justice Sardar Tariq Masood, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p.l.a.928_l_2021.pdf

Facts: Leave against the judgment of the Punjab Service Tribunal, has been sought whereby appeals filed by the respondents were allowed and the Graduate Primary Teachers were declared eligible for the grant of selection grade.

Issues: (i) Whether Graduate Primary Teachers are entitled for the grant of selection grade on the basis of Rule 8(3) of the Punjab Civil Servants Pay Revision Rules, 1977 (‘Rules of 1977’) read with the notification dated 25.08.1983 ('Notification dated 1983')?
(ii) Connotation of the term “Selection Grade”?
(iii) Whether retrospective regularization could create a right for claiming financial benefits?

Analysis: (i) The grant of selection grade and its eligibility criterion is thus necessarily governed under a policy which has to be formulated by the Government. It is not one of the terms and conditions of the civil servant under the Act of 1974 nor the Rules of 1974 or the Rules of 1977. A right, therefore, does not accrue in favour of a civil servant to claim selection grade in the absence of a specific policy that has been competently formulated by the Government. No court or tribunal has the power and jurisdiction to compel the Government to make a policy, or to interfere with a policy which has been competently made in relation to a specified post. As a corollary, the tribunal is bereft of jurisdiction to assume that a right exists in favor of a civil servant for the grant of selection grade unless the Government has formulated a policy. A higher pay scale was never sanctioned for the post of 'Graduate Primary Teacher' and, therefore, the aforementioned rule was not attracted. The notification dated 1983 also does not include the post of 'Graduate Primary Teacher' for the purposes of grant of selection grade.
(ii) The grant of selection grade is not an appointment against a post in the mode of promotion. Selection grade is thus not an appointment against a higher post but is meant to extend financial benefits of a higher grade. The selection grade is meant to financially compensate a civil servant who, despite serving against a particular post for a considerably long period, does not have the prospect of being promoted to a higher post. The grant of selection grade and its eligibility criterion is thus necessarily governed under a policy which has to be formulated by the Government.
(iii) The retrospective regularization, after withdrawal of the policy, could not create a right to claim a financial benefit which otherwise did not exist at the relevant time i.e. when the policy remained enforced.

Conclusion: (i) The Tribunal, in the absence of a policy specifically covering the grant of selection grade for the post of 'Graduate Primary Teacher' was not competent to purportedly create a right in favour of the respondents. The aforementioned rule and notification was not attracted to the facts of the case.
(ii) Selection grade is not an appointment against a higher post but is meant to extend financial benefits of a higher grade. The grant of selection grade and its eligibility criterion is thus necessarily governed under an executive policy.

(iii) See analysis part (iii) above.

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3. **Supreme Court of Pakistan**
Amir Sultan (In C.P. 3531/2021)Haseeb Ullah (In C.P. 3495/2023) and Employees Old-Age Benefits Institution through its Chairman Karachi (In all other cases) v. Adjudicating Authority-III EOBI, Islamabad and another (In C.P. 3531/2021 & C.P. 3495/2023) Muhammad Siddique Mughal and another (In C.P. 408/2023) Muhammad Ishtiaq and another (In C.P. 2451/2023)Sajjad Hussain and another (In C.P. 2452/2023) Muhammad Zahoor and another (In C.P. 2453/2023) Muhammad Zahir Hussain Shah and another (In C.P. 2454/2023) Malik Shahzad Ahmed and another (In C.P. 2455/2023) Muhammad Shabbir and another (In C.P. 2456/2023) Muhammad Hanif Khan and another (In C.P. 2457/2023) Ali Hussain and another (In C.P. 2468/2023) Syed Zahoor Hussain Shah and another (In C.P. 2469/2023)NiazGul and another (In C.P. 2471/2023)Riaz Ahmed and another (In C.P. 2471/2023) Saleem Iqbal and another (In C.P. 2472/2023) Muhammad Sadiq and another (In C.P. 2473/2023),C.P. No.3531/2021, C.P. Nos. 408, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2468, 2469, 2470, 2471, 2472, 2473 of 2023 and C.P No. 3495/2023.
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-Ud-Din Khan, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.p.3531_2021.pdf

Facts: The question decided here arises out of two sets of judgments from different High Courts, giving rise to conflicting opinions on the interpretation of Section 22(2) of the Employees' Old-Age Benefits Act, 1976.

Issue: What is the stage when the exception under Section 22(2) of the Employees' Old-Age Benefits Act, 1976 becomes applicable?

Analysis: Under Section 22(1) of the Employees' Old-Age Benefits Act, 1976, an insured person is entitled to monthly old-age pension at the rate specified in the Schedule to the Act ibid; (i) if he is sixty years of age or fifty five years in case of a woman and (ii) contribution in respect of him were paid for not less than fifteen years. Section 22(2) of the Act ibid provides an exception to the above to the effect that an insured person will also be entitled to an old-age pension if he on 1st July 1976 or on any day thereafter on which this Act ibid becomes applicable to the industry or establishment was (i) over forty years of age or thirty five years in case of a woman, and contribution in respect of him was paid for not less than seven years or (ii) over forty five years of age or forty years in case of a woman, and contribution in respect of him was paid for not less than five years. It is at these two points in time when the age of the insured person in terms of Section 22(2)(i) and (ii) of the Act ibid becomes relevant for invoking the exception of reduced years of contribution under the said provision.

Conclusion: To avail the exception under Section 22(2) of the Employees' Old-Age Benefits Act, 1976, the insured person must satisfy that he was in employment in the

industry or establishment on the first day of July 1976 or on the day the Act ibid became applicable to such an industry or establishment and was of the age mentioned in Section 22(2)(i) and (ii) of the Act ibid.

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4. **Supreme Court of Pakistan**
Commissioner Inland Revenue, Large Taxpayers Office, Islamabad v. Pakistan Oilfields Ltd., Rawalpindi, etc.
Civil Petitions No. 3472 to 3475/2023
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3472_2023.pdf

Facts: The petitioner sought leave to appeal against an order of the Islamabad High Court, whereby it had, as interim relief, restrained the petitioner from recovering the supertax under Section 4C of the Income Tax Ordinance 2001 as amended by the Finance Act 2023.

Issue: Whether the provisions of Article 199(4) of the Constitution are mandatory in nature?

Analysis: It is a well-established principle that where any provision couched in a negative language requires an act to be done in a particular manner then it should be done in the manner as required by the statute otherwise such act will be illegal and without jurisdiction. The use of the negative language, i.e., "shall not", in Article 199(4) leaves no doubt that its provisions are mandatory and an interim order passed without adhering to the procedure provided therein will be illegal and without jurisdiction.

Conclusion: The provisions of Article 199(4) of the Constitution are mandatory in nature.

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5. **Supreme Court of Pakistan**
Malik Arshad Hussain Awan v. M/s United Bank Limited
Civil Petition No. 1393-L of 2020
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1393_l_2020.pdf

Facts: Through the instant petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the order passed by the High Court that the petitioner's brother had to be first adjudged as mentally disordered by the Court of Protection under the provisions of the (Punjab) Mental Health Ordinance, 20011 before the petitioner could be entitled to file an application under Order XXXII, CPC, before the Banking Court.

Issues: i) How the court can appoint guardian for the persons of unsound mind: one who is already adjudged by a court of competent authority as a person of unsound mind; and the other, who is not so adjudged but the court itself on inquiry finds that the person is of unsound mind?

ii) What is the mandate and wisdom of Order XXXII of the Code of Civil Procedure, 1908?

iii) What is the subject and scope of the Mental Health Ordinance, 2001?

iv) How scope of the Mental Health Ordinance, 2001 is different and broader when compared to that of Order XXXII of the Code of Civil Procedure, 1908?

Analysis: i) Rule 15 of Order XXXII of the Code of Civil Procedure, 1908 provides that Rules 1 to 14 of Order XXXII shall apply to (i) persons adjudged to be of unsound mind and (ii) persons who though not so adjudged are found by the Court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued. The said Rule, therefore, acknowledges two categories of persons of unsound mind: one who is already adjudged by a court of competent authority as a person of unsound mind; and the other, who is not so adjudged but the court itself on inquiry finds that the person is of unsound mind. In both cases, the court is to appoint a guardian for the suit for such a person. In the first category, in view of the provisions of Rule 4(2) of Order XXXII of the Code of Civil Procedure, 1908 the court is to ordinarily appoint the same person as guardian for the suit who has been appointed the guardian under the Mental Health Ordinance, 2001; while in the second, the court may appoint any suitable person who has no interest against the person of unsound mind. In the second category, the court cannot decline to appoint the guardian for the suit merely for the reason that the defendant has not been so adjudged under the Mental Health Ordinance, 2001 by the competent authority.

ii) The mandate and wisdom of Order XXXII of the Code of Civil Procedure, 1908 is to ensure smooth continuation of proceedings and expeditious trial of suits wherein a minor or a person of unsound mind sues or is sued. The concept of next friend or guardian for the suit is to provide proper representation to a minor or a person with unsound mind during litigation, in order to protect his interests; therefore, their role is limited to the particular litigation or legal action for which they are appointed. Guardian for the suit is also called as "Guardian ad Litem"; the Latin term “ad litem” means “for the lawsuit”. Thus, guardian for the suit is appointed by a court specifically for the duration of legal proceedings and his role is temporary and limited to the particular lawsuit or legal matter. This might involve making decisions about litigation, settlement or other legal strategies. A guardian of the person or property of a minor or a person of unsound mind, on the other hand, is a person legally appointed to manage all the affairs of another person. Such a guardian has the authority to make decisions on behalf of the said person in various aspects of life, including financial, medical, and personal matters.

iii) This law deals with the care and treatment of mentally disordered persons, management of their property and other related matters. Under Section 29 of the Mental Health Ordinance, 2001, whenever a person is possessed of property and is alleged to be mentally disordered, the Court of Protection may, upon an application by any of his relatives filed after having obtained consent in writing of

the Advocate-General, direct an inquiry for the purposes of ascertaining whether such person is mentally disordered and incapable of managing himself, his property and his affairs. In case any person is found to be mentally disordered and incapable of taking care of himself, the Court of Protection appoints a guardian under Section 32 of the Mental Health Ordinance, 2001. A guardian so appointed under MHO is someone who is legally appointed to take care of and manage the personal and property interests of a mentally disordered person.

iv) The scope of the Mental Health Ordinance, 2001 is different and broader when compared to that of Order XXXII of the Code of Civil Procedure, 1908. It provides for care and treatment of mentally disordered persons, for the management of their properties and their affairs and to encourage community care of such persons. It is not limited only to representation before court in a suit. While the Mental Health Ordinance, 2001 does not specifically provide for representation before court while suing or being sued but it goes without saying that once a guardian is appointed by the Court of Protection he is to ordinarily act as the next friend and the guardian for the suit for the purposes of Order XXXII of the Code of Civil Procedure, 1908 (see Rule 4(2) of the said Order). The important thing is that where no such guardian has been appointed under the Mental Health Ordinance, 2001, it does not preclude the Civil Court, or the Banking Court in the present case, to proceed and appoint a guardian for the suit under Order XXXII, so that the interest of a mentally disordered person is protected before the court of law and also ensures the continuation and efficient conclusion of the trial

Conclusion: i) The court is to ordinarily appoint the same person as guardian for the suit who has been appointed the guardian under the Mental Health Ordinance, 2001; while in the second, the court may appoint any suitable person who has no interest against the person of unsound mind.

ii) The mandate and wisdom of Order XXXII of the Code of Civil Procedure, 1908 is to ensure smooth continuation of proceedings and expeditious trial of suits wherein a minor or a person of unsound mind sues or is sued.

iii) Mental Health Ordinance, 2001 deals with the care and treatment of mentally disordered persons, management of their property and other related matters.

iv) The scope of the Mental Health Ordinance, 2001 is different and broader when compared to that of Order XXXII of the Code of Civil Procedure, 1908.

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6. **Supreme Court of Pakistan**
Shaukat Mahmood v. Election Commission of Pakistan
Civil Petition No. 183 of 2024
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Mr. Justice Irfan Saadat Khan.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._183_2024_20032024.pdf

Facts: The Petitioner filed nomination papers to contest the general election of 2024 as a

Member of the National Assembly. However, the Returning Officer rejected the Petitioner's nomination papers. Aggrieved of the Returning Officer's Order, the Petitioner filed an Appeal under s. 63 of the Election Act, 2017, which was dismissed by the Election Appellate Tribunal. Subsequently the Petitioner challenged both the Order of the Returning Officer and that of the Tribunal in the Lahore High Court, via Writ Petition. However, this Writ Petition was dismissed by a full bench of the Lahore High Court ultimately; the Petitioner has challenged the Impugned Order through this petition and sought Leave to Appeal.

Issues:

i) Whether Electoral laws and rules can be used as an arbitrary filtering mechanism upon the whims of a Returning Officer?
ii) Whether the Election Act, 2017 creates any distinction between an 'exclusive bank account' or a 'joint bank account' and whether a 'joint bank account' could be 'exclusive' as well?
iii) Whether existing bank account cannot be a joint account as per the Election Act, 2017?
iv) Whether Rules must be consistent with the statute under which they are framed?
v) Whether S.R.O. which amended r. 51 of the Election Rules, 2017, by adding the proviso, conflicts with the Constitution and said proviso is violative and beyond the scope of its parent and enabling statute, the Election Act of 2017?
vi) What would be the cut-off time if the ECP has fixed the last date for scrutiny of nomination papers without mentioning office hours and whether the Returning Officer has any right to determine the cut-off period?

Analysis:

i) Elections are the bedrock of a democracy; and as the 16th President of the United States of America, Abraham Lincoln, once said, elections belong to the people. Therefore, it is essential that those wishing to contest elections be facilitated as far as is legally permissible. It goes without saying that it is against democratic norms and principles to add technical bottlenecks in the way of any individual, who is a citizen of this country, trying to contest elections. And in this backdrop, it is pertinent to say that electoral laws and rules cannot be used as an arbitrary filtering mechanism, dependent on the whims of a Returning Officer. Therefore, a Returning Officer should exercise the discretional powers available to him in a rational and meticulous manner.
ii) A mere cursory glance at s. 60(2)(b) of the Act shows that there is a requirement of a declaration that an 'exclusive' bank account, for the purpose of recording election expenses, has been opened, or an existing bank account be dedicated for the same, to be nominated for an election. However, the aforementioned section, or rather any section of the Act, does not create a distinction between an 'exclusive bank account' or a 'joint bank account.' After all, a 'joint bank account' could be 'exclusive' as well.
iii) Moreover, s. 60(2)(b) of the Act gave the Petitioner the option to dedicate an existing bank account for recording election expenses; in this regard, the Act does

not specify, once again anywhere in the 241 sections of Act, that this existing bank account cannot be a joint account.

iv) Rules have to be consistent with the statute under which they are framed and with all that is deemed to be incorporated in the statute. This observation in Sh. Abdur Rahman was further confirmed by this Court in Province of East Pakistan by stating that the rule making authority cannot clothe itself with power which the statute itself does not give. Since the Rules are the wheels on which the hypothetical vehicle of the Act runs, it is tantamount that both work in harmony; otherwise, the Act would not be able to serve the purpose for which it was passed by the legislature.

v) In our view, the Petitioner has showed that S.R.O. No. 1793(I)/2023, dated 12.12.2023, which amended r. 51 of the Rules, by adding the proviso, impinges upon the fundamental rights guaranteed under the Constitution and is in conflict with the Constitution, specifically the right to contest elections, which is a fundamental right guaranteed by Article 17(2) 5 of the Constitution, and has been upheld by this Court numerous times. The Petitioner, has also been successful in showing that the aforementioned proviso was beyond the legislative competence of the delegatee, the ECP, making it and that the proviso is violative and beyond the scope of its parent and enabling statute, the Act of 2017.(…) When the legislature has already mandated that the declaration required for nomination for election will be that of opening an exclusive bank account or dedicating an existing bank account, it was beyond the legislative competence of the ECP to require that such bank account shall not be a joint signatory account. At this juncture, it is quite clear to us that the legislature did not envision such a bifurcation, and therefore the proviso added by the ECP (and that too a mere 8 days prior to the date of filing nomination papers) 7 is violative and beyond the scope of its parent statute. Therefore, S.R.O. No. 1793(I)/2023, dated 12.12.2023, which amended r. 51 of the Rules, by adding the proviso, is in conflict and contradiction hence is not applicable to the matter at hand.

vi) We also wish to delve upon the conduct of the Returning Officer towards the Petitioner. As noted in Paragraph 4 of this judgement, Counsel for the Petitioner stated in his arguments advanced at the bar that the scrutiny for nomination papers of the Petitioner was fixed for 0 3:00 PM on 30.12.2023; whereas the Petitioner reached the Returning Officer's office at about 4:00 PM. The Returning Officer did not entertain the Petitioner citing the reason that his application was submitted after office hours. The election programme/schedule announced by the ECP, dated 15.12.2023, no Serial No. 4 states that the last date for scrutiny of nomination papers by the Returning Officer is from 24.12.2023 to 30.12.2023. We have carefully perused the one -page notification multiple times, and in any of those instances have not come across any official "office hours." With due respect to the Returning Officer, if the ECP has fixed the last date for scrutiny of nomination papers as 30.12.2023, the Returning Officer has no right to determine the cut - off period on 30.12.2023 or what "office hours" he or she will operate until on the last date, i.e. 30.12.2023. In our view, until the clock strikes

midnight on 30.12.2023 or whatever the last date of the scrutiny of nomination paper may be for any future election, the Returning Officer must scrutinize all nomination papers submitted to him, in the best interest of justice and to uphold the fundamental right of any individual to contest elections.

Conclusions: i) Electoral laws and rules cannot be used as an arbitrary filtering mechanism, dependent on the whims of a Returning Officer. Therefore, a Returning Officer should exercise the discretional powers available to him in a rational and meticulous manner.

ii) Election Act, 2017, does not create a distinction between an 'exclusive bank account' or a 'joint bank account.' and, a 'joint bank account' could be 'exclusive' as well.

iii) Section 60(2)(b) of the Election Act gave the candidate the option to dedicate an existing bank account for recording election expenses; and in this regard, the Act does not specify anywhere that this existing bank account cannot be a joint account.

iv) Rules must be consistent with the statute under which they are framed and with all that is deemed to be incorporated in the statute. The rule making authority cannot clothe itself with power which the statute itself does not give.

v) The S.R.O. which amended r. 51 of the Rules, by adding the proviso, impinges upon the fundamental rights guaranteed under the Constitution and conflicts with the Constitution, and the said proviso is beyond the legislative competence of the delegatee, the ECP, making it and that the proviso is violative and beyond the scope of its parent and enabling statute, the Election Act of 2017.

vi) If the ECP has fixed the last date for scrutiny of nomination papers without mentioning any official "office hours.", the Returning Officer has no right to determine the cut-off period or what "office hours" he or she will operate until the clock strikes midnight on the last date of the scrutiny of nomination paper.

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7. **Supreme Court of Pakistan**
Sanam Javaid Khan (Presently confined in Kot Lakhpat Jail, Lahore) through her attorney Jawad Javaid Khan v. Election Appellate Tribunal, Punjab and others
Election Appellate Tribunal, Punjab and others
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._184_2024_21032024.pdf

Facts: The petitioner was proposed as a candidate for election and on scrutiny, her nomination papers were rejected by Returning Officer being not complaint with provisions of Elections Act, 2017. On appeal, this order was maintained by Election Tribunal. After that High Court, within its Constitutional Jurisdiction, upheld the rejection. The petitioner who is a prisoner has filed an appeal against order of the High Court upholding orders rejecting her nomination papers.

Issues: i) What is status of Rule 51 amended by Election Commission of Pakistan by virtue of delegated power u/s 230 of Elections Act?
ii) What will be effect of any discrepancy in nomination papers?
iii) Whether the relevant column of declaration in nomination papers provides for requirement of joint account to be opened by candidate for election expenses?
iv) Whether scope of summary inquiry by retuning officer u/s 62(9) of Elections Act, 2017, permits the Returning Officer to get the signatures of the candidate (who is a prisoner) verified by jail authorities?

Analysis: i) Rule 51 states that the bank account so opened for the purpose to document election expenditure should not be a joint signatory account. At this stage, it is apposite to state that the Election Commission of Pakistan exercising its delegated power under section 239 of the Act, has made the above rule. It is deeply rooted that if a rule goes beyond the rule-making power conferred by the statute or if a rule supplants any provision for which power has not been conferred, it becomes invalid. A delegated power to legislate by making rules cannot be exercised to bring into existence substantive rights, obligations or disabilities not contemplated by the provisions of the statute. The Commission, as a rule making body has no inherent power of its own to make rules but derives such power only from the Act, and so, it necessarily has to function within the purview of the Act. In light of above, it appears, the stipulation in Rule 51 that the bank account so opened or dedicated should not be a joint signatory account is inconsistent with the express provision of section 60(2)(b) of the Act. Since this rule travels beyond the ambit of the Act, it is ultra vires and cannot be given any effect, and resultantly, based on it the nomination papers could not be rejected.
ii) The nomination papers were printed by the Commission under section 60(2) of the Act and if there is any discrepancy in it, the candidate will benefit from it.
iii) The tenor of column No.3 of the declaration provides two options for a candidate. First, the candidate has to declare that he/she has opened an exclusive single signatory account, which means that before filing nomination papers, the candidate has opened an exclusive single signatory account for the purpose of documentary evidence of election expenses. If, for any reason, the candidate cannot open an exclusive single signatory account before filing the nomination papers, the other option for him/her is to declare that he/she will use his/her existing account for the purpose of election expenses. This implies two things: firstly, the existing account may be single or joint, and secondly, a candidate is given the opportunity, if their account is joint, to have it converted into a single signatory account for the purpose of election expenses later on. This option seems to be for those candidates who, due to some exigencies including illness, imprisonment, etc., cannot open their exclusive single signatory bank account or convert their existing joint account to a single signatory account before filing nomination papers. The purpose of providing such a facility can only be to ensure that the citizens are not deprived of their fundamental right, that is, to contest election freely. So viewed the objection, if any, with regard to the joint bank

account declared by the petitioner, it could not be held to be a defect which was substantial in nature as the petitioner had the option, as stated above, to rectify it under proviso (ii) to sub-section (9) of section 62 of the Act, and convert it into single signatory account.

iv) Sub-section (9) of section 62 of the Act provides for inquiry by RO to reject the nomination papers. According to it, the RO may conduct a summary inquiry and may reject the nomination papers if he is satisfied that (a) the candidate is not qualified to be elected as a Member; (b) the proposer or the seconder is not qualified to subscribe to the nomination paper; (c) any provision of section 60 or section 61 has not been complied with or the candidate has submitted a declaration or statement which is false or incorrect in any material particular; or (d) the signature of the proposer or the seconder is not genuine. This scope of inquiry does not permit the RO to get the signature of the petitioner verified from the jail authorities, nor the non-verification or attestation of the nomination papers by the jail authorities is a condition precedent nor was the difference in the candidate's signature a valid reason for rejecting the nomination papers, particularly when the petitioner/candidate filed an appeal admitting her signature, and then a constitutional petition. Thus, this ground could not be used as a basis to draw the inference that signatures were not genuine and to reject the nomination papers.

Conclusion: i) Since rule 51 travels beyond the ambit of the Elections Act, 2017, it is ultra vires and cannot be given any effect, and resultantly, based on it the nomination papers could not be rejected.

ii) The nomination papers were printed by the Commission under section 60(2) of the Act and if there is any discrepancy in it, the candidate will benefit from it.

iii) See under analysis no. 03.

iv) Scope of summary inquiry by retuning officer u/s 62(9) of Elections Act, 2017, does not permit the Returning Officer to get the signatures of the candidate (who is a prisoner) verified by jail authorities.

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8. **Supreme Court of Pakistan**
Ali Raza v. Regional Police Officer & another
C.P.L.A.No. 1593-L of 2020
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1593_l_2020.pdf

Facts: The petitioner was working as a constable in the police department when disciplinary proceedings were initiated against him on the charge of inefficiency and misconduct, under the Punjab Police (Efficiency & Discipline) Rules, 1975. Allegation against the petitioner was of grave misconduct and being involved in two criminal cases of delinquent nature. He was held to be guilty, and a major penalty of dismissal from the service was imposed upon him. Aggrieved, he availed himself of a departmental appeal. It was found out of time, and thus, was rejected. He then filed his service appeal before the Punjab Service Tribunal, and

the Tribunal relying on the precedents of this Court, dismissed it, with the observation that when an appeal of an employee is time barred before the appellate authority then appeal before the Tribunal will also not be competent.

Issue: When the period for filing a departmental appeal is not provided in the efficiency and discipline rules for the employees of the Punjab Police, can it then be dismissed on the ground of time- lapse?

Analysis: It has been submitted on behalf of the petitioner that the proceedings against him were initiated under the Punjab Police (Efficiency & Discipline) Rules, 1975, which do not prescribe any period for filing a departmental appeal against the order of punishment. Therefore, it could not be dismissed on the ground of limitation, and consequently, the Punjab Service Tribunal also erred in dismissing the service appeal. The strength of this argument was sought from an unreported judgment of this Court, in the case of Tahira Paras. (…) Mr. Baleegh-Uz-Zaman, learned Additional Advocate General has eloquently answered the above contention by referring to the provisions of section 21 of the Punjab Civil Servants Act, 1974. He submitted that notwithstanding Rule 14 of the Punjab Police (Efficiency and Discipline) Rules, 1975, where no time period for filing an appeal has been provided, the time frame specified under section 21 of the Punjab Civil Servants Act, 1974, is to be followed, which is sixty days. We agree with this.

Conclusion: Departmental appeal can be dismissed being time barred, as in Rule 14 of the Punjab Police (Efficiency and Discipline) Rules, 1975 no time period for filing an appeal has been provided, then the time frame specified under section 21 of the Punjab Civil Servants Act, 1974, is to be followed, which is sixty days.

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9. **Supreme Court of Pakistan**
Ibrahim Khan v. Mst. Saima Khan and others
Civil Petitions No.4657 To 4659 of 2022
Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4657_2022.pdf

Facts: These Civil Petitions directed against judgment passed by the Peshawar High Court, Abbottabad Bench whereby writ petition filed by the Petitioner was dismissed whereas writ petitions filed by Respondent No.1 were allowed.

Issues: i) Whether the court can convert a prayer for dissolution of marriage on the ground of cruelty to a prayer for seeking dissolution of marriage by way of khula, where the khula is not sought for by a woman?
ii) What are the procedural distinctions, in suits filed by woman for dissolution of marriage under the grounds of Dissolution of Muslim Marriages Act, 1939 (DMMA) or through khula?
iii) Whether khula is a basic right of a woman?

Analysis: i) Now the question is whether, in a prayer for dissolution of marriage on the ground of cruelty or any ground under the DMMA, the Court of its own motion can convert that prayer into a dissolution by way of khula. This question was raised before this Court in Muhammad Siddiq 16 wherein leave was granted to consider whether the High Court could decree the suit on a ground not raised in the plaint as the plaint did not seek dissolution on the ground of khula but merely dissolution of marriage on the ground of cruelty and non- payment of maintenance. This Court concluded that the High Court could not change the prayer by granting khula as the prayer of khula has to be a specific prayer sought for by the wife. (…) the right to seek khula is the exclusive and absolute right of the woman. She must in unambiguous and unequivocal terms express her intention to exercise such right before the court, that is to say, she must put her offer before the court that she seeks release from the marriage by waiving her dower and only then the court can grant her khula. Fundamentally, as stated above, the principle is that khula cannot be granted, if it has not been explicitly sought for by the woman because she has to give up her right to dower as per Section 10(5) of the FCA. Hence, a court cannot on its own pass the decree of khula if it has not been sought for by the woman. Therefore, her consent is vital.

ii) Where a woman files suit for dissolution of marriage under the grounds of DMMA or through khula, there are procedural distinctions. Firstly, under Section 2 of the DMMA, various grounds (cruelty, assault, ill-treatment, etc.) are provided for judicial pronouncement of dissolving the marital relationship, which is also called fuskh. Hence, there must be some cause as per the DMMA to get a decree of dissolution of marriage under the DMMA. However, khula can be granted to a woman without establishing any ground or proving the cause to the court. Secondly, if the grounds under the DMMA are established by a woman, then Section 5 of the said law protects her right of dower as the same shall not be affected. Whereas in khula, she has to waive or forgo her right of dower. Lastly, in terms of procedure in the case of khula , once the pre-trial reconciliation fails under Section 10 of the Family Courts Act, 1964 (FCA), the court is bound to immediately pass a decree for the dissolution of marriage. Whereas the decree for dissolution of marriage under the DMMA can only be passed after the recording of evidence under Section 11 of the FCA. Therefore, termination of marriage under the DMMA or by way of khula exists in distinct and different legal domains with separate consequences.

iii) As per Principles of Mahomedan Law ,1 Paragraph No. 319(2) provides that a divorce by khula is a divorce with the consent, and at the instance of the wife, in which she gives or agrees to give consideration to the husband for release from the marriage. It is a bargain or arrangement between the husband and wife whereby she may, as a consideration, release her dower and other rights for grant of khula .The said Paragraph continues to state that khula is affected by an offer from the wife to compensate the husband if he releases her from the marriage. Once the offer is accepted, it operates as a single irrevocable divorce (talak -i-

bain) and its operation is not postponed until the execution of the deed of khula. Paragraph No. 320 of the Principles of Mahomedan Law provides that a divorce effected by khula operates as a release by the wife of her dower, but it does not affect the liability of the husband to maintain her during her iddat, or to maintain his children by her. Therefore, in terms of the Principles of Mahomedan Law, a khula is essentially the release from the marriage that a woman can seek by agreeing to waive her dower. This Court in Khurshid Bibi while examining the concept of khula held that khula is provided to a woman as a right that she may seek from the court if she seeks release from the marriage for which she must be willing to offer compensation or release of dower. Khula is an irrevocable divorce that the wife can seek in case of extreme incompatibility. It is the right of a woman for which she does not have to level any allegation; she simply has to say that she does not want to live with her husband. In other words, khula can be granted to a woman without any fault of a husband. As khula is a special and exclusive right given to a woman, which is not available to a man, she can seek dissolution on the basis of khula in which one of the consequences is that she can re-marry the same man, without entering into intervening or intermediary marriage i.e. halala. In Haji Saif -ur-Rahman, the Federal Shariat Court held that the right of khula granted to a woman by the Holy Quran and Sunnah is an absolute and unique right whereby a marriage can be dissolved through a court at her will and this right of a woman cannot be denied by the court of law. Therefore, khula is a basic right of a woman under Muslim family law.

Conclusions: i) Khula is the exclusive and absolute right of the woman and the same cannot be granted, if it has not been explicitly sought for by the woman because she has to give up her right to dower as per Section 10(5) of the FCA. Hence, a court cannot on its own pass the decree of khula if it has not been sought for by the woman and her consent is vital.

ii) See above in analysis clause No. ii.

iii) Khula is a basic right of a woman under Muslim family law whereby a marriage can be dissolved through a court at her will and this right of a woman cannot be denied by the court of law.

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10. **Supreme Court of Pakistan**
B.P. Pakistan Exploration and Production, Inc. v. Ashique Hussain Halepoto and others, Muhammad Halepoto and others, Zulfiqar Ali Shah and others
Civil Appeals No.1653 to 1655/2007
Mr. Justice Yahya Afridi, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1653_2007.pdf

Facts: Appellant company invoked the jurisdiction of the Supreme Court under Section 54 of the Land Acquisition Act, 1894 read with Article 185(2) of the Constitution of Islamic Republic of Pakistan, 1973, and challenged the impugned judgment of

the High Court wherein the compensation awarded by the Referee Court to the respondents for acquisition of their property was maintained.

Issues: i) Whether the appellant company can file an appeal against the judgment of the Referee Court?
ii) What is the criterion for determination of compensation to be awarded for acquisition of the acquired-property?
iii) What is the determining factor, for the determination of the rate of compulsory charges?
iv) When the appellant-company is liable to pay interest on the compensation awarded?

Analysis: i) As far as the appeal of the appellant-company against the judgment of the Referee Court is concerned, the challenge could be made under Section 54 of the Act…The said provision clearly vests an aggrieved person to challenge the judgment of the Referee Court before the High Court, as was done by the appellant-company in the present case. Hence, the appeals of the appellant-company before the High Court were maintainable.
ii) It is by now settled that the compensation for the property being acquired must not only be based on its market value but also the potential value thereof.
iii) The determining factor, for the determination of the rate of compulsory charges would be the declaration made by the acquiring government in the notifications issued under Sections 4 and 6 of the Land Acquisition Act, 1894.
iv) The appellant-company is only liable to pay interest on the compensation awarded to the private respondents/landowners from the time they stopped paying rent until the full compensation for the acquired property was paid.

Conclusion: i) As far as the appeal of the appellant-company against the judgment of the Referee Court is concerned, the challenge could be made under Section 54 of the Land Acquisition Act, 1894.
ii) The compensation for the property being acquired must not only be based on its market value but also the potential value thereof.
iii) The determining factor, for the determination of the rate of compulsory charges would be the declaration made by the acquiring government in the notifications issued under Sections 4 and 6 of the Land Acquisition Act, 1894.
iv) See above in analysis part (iv)

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11. Supreme Court of Pakistan
Federation of Pakistan through the Secretary, Ministry of Law and Justice, Islamabad & Afiya Shehrbano Zia and others v. Supreme Judicial Council through its Secretary, Supreme Court Building, Islamabad and others
ICA No.1 and 2/2024 in Constitutional Petition No.19/2020
Mr. Justice Amin-ud-Din Khan, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali, Mr. Justice Irfan Saadat Khan

https://www.supremecourt.gov.pk/downloads_judgements/i.c.a._1_2024_15032024.pdf

Facts: Appeals were filed under section 5 of the Supreme Court (Practice & Procedure) Act, 2023 read with Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973 ('the Constitution'), whereby appellants challenged the judgment passed by the learned two member bench of this Court in Constitution Petition No. 19 of 2020 filed under Article 184(3) of the Constitution by the appellants of ICA No. 2 of 2024 which was dismissed *in limine*.

Issue: Whether Article 209 envisages that by resignation of a Judge or retirement on superannuation the proceedings which are pending before the SJC will automatically come to end or it is the prerogative of the SJC to proceed with the matter?

Analysis: At the time of hearing of petition filed by the appellants of ICA No. 2 of 2024, the Judge had already been retired against whom complaints filed by the said appellants were pressed, though the complaint was filed against the Judge when he was a Chief Justice but unfortunately the complaint could not be placed before the SJC and after the retirement of said Judge when it was placed before the SJC same was dismissed as having become infructuous. The main consideration before the learned two member Bench of this Court while hearing the Constitution Petition was that the SJC has declared the complaint as having become infructuous, therefore, mainly the emphasis of the Court was upon the said point whereas it was not a case before the Court that after considering the complaint some steps were taken in the complaint i.e. issuance of notice to the Judge against whom complaint was filed or any reply or the response to the complaint, not it was the question before the Court that during the pendency of the complaint after issuance of notice by the SJC the effect of retirement of a Judge or resignation but the effect of the impugned judgment is that even if the complaint is pending after taking cognizance by the SJC, it abates on retirement of a Judge or resignation, therefore, Federal Government was aggrieved and filed the instant appeal, on which point we agree with the appellant…. it is the prerogative of the SJC to proceed with the matter and the proceedings pending before the SJC which are initiated after issuance of notice to a Judge do not automatically drop or become infructuous on superannuation or resignation of a Judge.

Conclusion: Article 209 envisages that by resignation of a Judge or retirement on superannuation the proceedings which are pending before the SJC will not automatically come to end and it is the prerogative of the SJC to proceed with the matter.

Additional Note by Mr. Justice Jamal Khan Mandokhail

Issues: i) Whether limitation can be condoned where a question of public importance relating to interpretation of Constitution is involved specially when no notice was given to the Attorney General for Pakistan as required by Order XXVII-A Rule 1 CPC?

ii) Whether the Council can inquire into the capacity or conduct of a judge, who has retired or has resigned from his office?

iii) Whether the Council can continue to inquire into the conduct or capacity of a judge, who during the pendency of the inquiry proceedings, retires or resigns from his office?

Analysis: i) It is a fact that the petition under Article 184(3) of the Constitution was filed by the private appellants, but the Federal Government was not arrayed as party to the proceedings. Through the said petition, interpretation of Article 209 of the Constitution was required, therefore, it was mandatory for the Court to have had issued a notice to the Attorney General for Pakistan ("**AG**") as required by Order XXVII-A Rule 1 CPC….Since neither the Federal Government was arrayed as party to the proceedings nor mandatory notice required under Order XXVII-A Rule 1 CPC was issued to the AG, therefore, there is no reason to disbelieve his contention regarding his unawareness of the date of the pronouncement of the impugned judgment. Even otherwise, a Ten Member Bench of this Court through the referred judgment [Federal Govt. of Pakistan vs. M.D.Tahir Adovcate] has condoned the delay of 257 days in filing of petition solely on the ground of public importance…

ii) A plain reading of the said provision [Article 209(5)] of the Constitution makes it clear that the Constitution has mandated the President that on information from any source, he shall direct the Council to inquire into the matter. The phrase, '*the President Shall direct the Council'* used in this provision of the Constitution makes it mandatory upon the Council that it has no option, but to initiate inquiry against the judge accordingly in a case the reference is received from the president. Similarly, if the Council deems it appropriate, may on its own motion inquire into the matter. After a preliminary inquiry, the Council may dismiss the complaint for lack of evidence or untrue information. In both circumstances, once the Council invokes its Constitutional jurisdiction by initiating inquiry into the matter against a judge, it has to take the proceedings to its logical conclusion…. In any case, it was necessary for the Council to have decided the fate of the complaint before retirement of the former HCJ, but the needful was not done, therefore, after his retirement, the Council cannot proceed.

iii) As a general rule, the Authority inquiring into the conduct of a judge loses its jurisdiction to initiate proceedings against a person who retires or resigns from his office, before initiation of inquiry proceedings. Whereas, when an inquiry about the conduct of a judge in office is initiated by the Council, it is the Constitutional obligation of the Council to conclude the proceedings, form its opinion and report to the President with recommendations. In this provision of the Constitution, the

word 'inquiry' has been used. The primary purpose of inquiry is to gather information in order to address a specific issue of public interest and to make recommendations for improvement and prevention of future occurrences. It is not to focus on enforcing laws or prosecuting individuals as is mandated in investigation, rather to inquire into the ethical violations and misconduct of a judge. It promotes accountability and trust in the process by the public….When an inquiry into conduct of a judge initiated by the Council is terminated without an opinion, on account of retirement or resignation of a judge from his office, it would render Article 209 (5) & (6) of the Constitution redundant and would also give an authority to the judge to make the Constitutional body abandoned….Termination of inquiry proceedings upon retirement of a judge would otherwise give an impression that the Council is dependent on the will of the judge, who can overpower the control of the Constitutional body. It may create a perception that the judges are above the law. After his retirement or resignation, prior to inquiry initiated, a judge enjoys a status of a retired judge, with lucrative post-retirement benefits from public ex- chequer. He is also eligible for his re-appointment against some important Constitutional, quasi-judicial and administrative posts, for which evaluation of his conduct and reputation is essential. The jurisdiction of the Council to inquire into the matter pertaining to misconduct of a judge is a Constitutional mandate. In absence of express words or an enactment, preventing the Council from inquiring into the matter upon resignation or retirement of a judge, jurisdiction of the Council cannot be abolished, ousted or terminated. Since there is no express provision in the Constitution, nor is there any enactment, preventing the Council from continuing its proceedings of inquiry in a situation where a judge is retired or resigns before conclusion of the inquiry, it is the Constitutional obligation of the Council to conclude the inquiry initiated against a judge and form an opinion regarding his conduct. If after inquiring into the matter, the Council is of the opinion that the judge has been guilty of misconduct, under such circumstances, he shall not be eligible for post-retirement benefits…If the proceedings are made dependent upon the will of the judge on account of his resignation, at any stage before conclusion of inquiry, it would let the judge, who is guilty of misconduct, to go Scott free by defeating the process of accountability. This would damage rule of law norms and public trust in the role of judges and the judiciary…For these reasons, it is imperative that once the Council in exercise of its Constitutional authority, initiates inquiry into conduct of a judge, it cannot terminate or abate upon retirement or resignation of the judge from his office. The citizens have a right to know about the outcome of the complaints.

Conclusion: i) Limitation can be condoned where a question of public importance relating to interpretation of Constitution is involved specially when no notice was given to the Attorney General for Pakistan as required by Order XXVII-A Rule 1 CPC.

ii) The Council cannot inquire into the capacity or conduct of a judge, who has retired or has resigned from his office.

iii) The Council can continue to inquire into the conduct or capacity of a judge, who during the pendency of the inquiry proceedings, retires or resigns from his office.

Dissenting Note by Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/i.c.a._1_2024_dn_20032024.pdf

Issues: i) Whether limitation can be regarded as a mere technicality?
ii) Whether the Council can proceed against a Judge on a pending complaint after his retirement or resignation?

Analysis: i) The law of limitation is a law that is designed to impose *quietus* on legal dissensions and conflicts. It requires that persons must come to Court and take recourse to legal remedies with due diligence. Therefore, the limitation cannot be regarded as a mere technicality. With the expiration of the limitation period, valuable rights accrue to the other party, as observed in numerous judgments by this Court.

ii) The majority judgment unnecessarily split the issue into two different categories**:** Judges of this Court or High Courts against whom a complaint under Article 209 is pending, where (a) no further steps have been taken by the Council, and (b) the Council has initiated the proceeding by issuing notices, etc…. Article 209 of the Constitution does not recognize any such classification, despite having been amended twice since 1973.Clause 5 thereof categorically stipulates that "*if, on information from any source, the Council or the President is of the opinion that a Judge of the Supreme Court or a High Court--(a) may be incapable of properly performing the duties of his office by reason of physical or mental incapacity; or (b) may have been guilty of misconduct", the President shall direct the Council to, or the Council may, on its own motion, inquire into the matter.*' The above clause clearly suggests that the President or the Council is competent to inquire into a matter under Article 209 against 'a judge of the Supreme Court or a High Court,' which may result in their removal. Articles 179 and 195 of the Constitution provide that a Judge of the Supreme Court and the High Court shall hold office until he attains the age of sixty-five years and sixty-two years respectively, unless he sooner resigns or is removed from office in accordance with the Constitution. The combined effect of the above articles is that a judge, after retirement or resignation, cannot be termed as 'a judge of the Supreme Court or a High Court,' within the purview of Article 209 (5) of the Constitution and as such, the Council lacks authority to conduct an inquiry against them. Being so, any complaint pending against a judge, whether proceedings have been initiated or not, shall abate after his retirement or resignation, accordingly.

Conclusion: i) Limitation cannot be regarded as a mere technicality.
ii) The Council cannot proceed against a Judge on a pending complaint after his retirement or resignation.

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12. **Supreme Court of Pakistan**
Abdullah Jumani & others v. Province of Sindh & others.
Civil Appeals No.26 -K to 38 -K of 2021
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._26_k_2021.pdf

Facts: These Civil Appeals directed against the common judgment passed by the Sindh High Court, Karachi, in Constitutional Petitions, which were dismissed with certain directions.

Issues: i) What is the responsibility of lawgivers when they promulgate any law, especially a beneficial law?
ii) What is the scope of Article 199 of the Constitution?
iii) Whether High Court can exercise suo motu jurisdiction under Article 199 as compared to Article 184(3) of the Constitution?
iv) Whether the High Court can strike down any law?
v) What principles guide the judiciary's role in interpreting statutes, and what factors might prompt them to deviate from a strict adherence to the grammatical meaning of statutory language?
vi) On whom the burden of proof lies in cases where the validity of a law is contested, and what criteria must be met by him?
vii) What approach does the court take when faced with statutory interpretation involving multiple possible meanings?
viii) What is meant by phrase “forum prorogatum?
ix) What is the legal definition and significance of the term "jurisdiction" and concept of judicial overreach?

Analysis: i) When the lawgivers declare or promulgate any law, especially a beneficial law, then it is their strenuous and arduous responsibility to implement it across the board benevolently, with an open heart, and without any conservative, rigid, or discriminatory approach.
ii) Under Article 199 of the Constitution, subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law then on the application of any aggrieved party, can direct a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do. The High Court can also declare that any act done or proceeding taken within the territorial jurisdiction by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or on the application of any person, can issue directions that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful

manner; and can also require a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office; and on the application of any aggrieved person, can issue directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within its jurisdiction as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II. However, subject to the Constitution, the right to move a High Court for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II shall not be abridged. The term 'Person" includes any body politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government, and any Court or tribunal, other than the Supreme Court, a High Court or a Court or tribunal established under a law relating to the Armed Forces of Pakistan; and prescribed law officer means in relation to an application affecting the Federal Government or an authority of or under the control of the Federal Government, the Attorney-General, and, in any other case, the Advocate -General for the Province in which the application is made**.**

iii) It is a settled exposition and ratification of law that the High Court does not possess any suo motu jurisdiction under Article 199 of the Constitution as compared to this Court which has been bestowed exclusive jurisdiction by virtue of Article 184(3) of the Constitution which is not interchangeable, switchable or transposable to the High Court while excercsing jurisdiction under the sphere and dominion of Article 199.

iv) No doubt, if the constitutionality of any law is challenged in the High Court, the Court can scrutinize and survey such law and also strike it down if it is found to be offending the Constitution for absenteeism of law-making and jurisdictive competence or is in violation of fundamental rights.

v) The function of the judiciary is not to legislate or question the wisdom of the legislature in making a particular law, nor can the judiciary refuse to enforce a law. The intention of the legislature is primarily to be gathered from the language used. The words of a statute are first understood in their natural, ordinary, or popular sense, and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context or the object of the statute that suggests the contrary or that lacks legislative power.

vi) If the vires of a law are challenged, the burden always rests upon the person making such challenge to show that the same was violative of any of the fundamental rights or the provisions of the Constitution

vii) Where more than one interpretation is possible, the Court must prefer the interpretation which favours the validity without attributing mala fide to the legislature.

viii) The phrase “forum prorogatum” originated in Roman law, which literally means “prorogated jurisdiction” i.e., extension of the jurisdiction of a court by

agreement of the parties in a case which would otherwise be outside its jurisdiction.

ix) The term 'jurisdiction' in the legal parlance means the command conferred to the Courts by law and Constitution to adjudicate matters between the parties. The jurisdiction of every Court is delineated and established to adhere to and pass legal orders. Transgressing or overriding the boundary of its jurisdiction and authority annuls and invalidates the judgments and orders. The Courts commit judicial overreach when they exercise powers beyond the compass of powers and jurisdiction entrusted to the courts through the law and the Constitution.

Conclusions: i) When lawgivers declare or promulgate any law, especially a beneficial law, then it is their strenuous and arduous responsibility to implement it across the board benevolently, with an open heart, and without any conservative, rigid, or discriminatory approach.

ii) See above in analysis clause No. ii.

iii) High Court cannot exercise suo motu jurisdiction under Article 199 as compared to Article 184(3) of the Constitution.

iv) If the constitutionality of any law is challenged in the High Court, the Court can scrutinize and survey such law and also strike it down.

v) See above in analysis clause No. v.

vi) If the vires of a law are challenged, the burden always rests upon the person making such challenge to show that the same was violative of any of the fundamental rights or the provisions of the Constitution.

vii) Where more than one interpretation is possible, the Court must prefer the interpretation which favours the validity without attributing mala fide to the legislature.

viii) The phrase “forum prorogatum” means “prorogated jurisdiction” i.e., extension of the jurisdiction of a court by agreement of the parties in a case which would otherwise be outside its jurisdiction.

ix) The term 'jurisdiction' in the legal parlance means the command conferred to the Courts by law and Constitution to adjudicate matters between the parties and the courts commit judicial overreach when they exercise powers beyond the compass of jurisdiction.

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13. **Supreme Court of Pakistan**
Mst. Farzana Zia and others v. Mst. Saadia Andaleeb and others
Civil Appeal No.1012 of 2018
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1012_2018.pdf

Facts: The Civil suit of appellants was instituted with the prayer that the Release Deed, based for transfer of suit property in favour of respondent No.2, may be declared null and void. The said suit was decreed and relevant appeals were dismissed. However, consequent revision application filed by the Respondent No.2 before High Court was allowed and concurrent findings recorded by the courts below

were set aside. Hence, instant Civil Appeal.

Issues: i) What would be the legal status of a Release Deed which was executed by sisters when they were not available with independent advice to understand its nature and later, it was made basis for transfer of their shares in property in favour of their brother?

ii) What the Deed of Release or relinquishment must encapsulate and what outcome it has?

iii) Whether the Deed of Release or relinquishment and the indenture of gift can be deemed to be inter-changeable or substitutable?

iv) Whether the High Court can substitute its own findings with concurrent conclusions of the lower courts whilst exercising powers under Section 100 or under revisional jurisdiction under Section 115 of C.P.C.?

Analysis: i) If everything was done with free will and consent or there was a conscious abandonment of rights, then the best marginal witnesses to the Release Deed executed by sisters would be their husbands, the absence of whom would transpire that the sisters had no independent advice to understand the nature of the document to safe guard their interest.

ii) The substratum of the indenture of the Release Deed or the Relinquishment Deed encompasses the conveyance of right, title, or interest in the immovable property by the legal heirs in the joint property by which a co-owner renounces his rights in favour of another legal heir with consideration or even without consideration or on account of some family settlement discernible from the record, which would in future operate as an *estoppel* to lodge any future claim on account of the doctrine of *spessuccessionis*.

iii) Under the Muslim Law, the constituents of a valid gift are tender, acceptance and possession of property. A Muslim can devolve his property under Muslim Law by means of *inter vivos* i.e. gift or through testamentary dispositions i.e. will. However, the Transfer of Property Act, 1882, has no application to the gift envisioned and encapsulated under the Muslim Law. For the foregoing reason, Sections 123 and 129 of the Transfer of Property Act can neither surpass nor outweigh or preponderate the matters of gifts contemplated under the Muslim Law.

iv) The High Court has the powers to re-evaluate the concurrent findings of fact arrived at by the lower courts in appropriate cases, but cannot upset such crystalized findings if the same are based on relevant evidence or without any misreading or non-reading of evidence. If the facts have been justly tried by two courts and the same conclusion has been reached by both the courts concurrently then it would not be judicious to revisit it for drawing some other conclusion or interpretation of evidence in a second appeal under Section 100 or under revisional jurisdiction under Section 115, C.P.C., because any such attempt would also be against the doctrine of finality.

Conclusion: i) If the sisters were not available with independent advice to understand nature of Release Deed executed by them, later on, the same was made basis for transfer of their shares in property in favour of their brother, then the execution of such Release Deed and subsequent transfer would be liable to be declared *void ab-initio* and ineffective.

ii) The Deed of Release or relinquishment must encapsulate, the date when the right to the property was given up; purpose of giving up the right; consideration, if any; consent of the party giving up the right in the property etc. As an outcome, one of the co-sharers/legal heirs separates himself or herself from the joint or inherited property, with the aspiration to put an end to any unresolved or unsettled issue or differences between the parties to prevent future litigation.

iii) It is a well-settled elucidation of law that the Deed of Release or relinquishment and the indenture of gift both have distinctive paraphernalia, characteristics and corollaries and cannot deemed to be inter changeable or substitutable.

iv) The High Court cannot substitute its own findings unless it is found that the conclusions drawn by the lower courts were flawed or deviant to the erroneous proposition of law or caused serious miscarriage of justice and must also avoid independent re-assessment of the evidence to supplant its own conclusion.

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14. **Supreme Court of Pakistan**
Muhammad Shafique v. Muhammad Imran and another
Criminal Appeal No.558 of 2019
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Mussarat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._558_2019.pdf

Facts: Through this appeal, by leave of the Court, the appellant has impugned the judgment passed by the Lahore High Court, Rawalpindi Bench, whereby criminal appeal was dismissed confirming his death sentence and answering Murder Reference in the affirmative.

Issue: Whether solitary firearm injury on the body of deceased serves as a mitigating circumstance in favour of an accused entitling him lesser punishment?

Analysis: However, as far as the quantum of punishment is concerned, it is prosecution's own case that the appellant hit Ata Muhammad deceased with his pistol (P -9) on the left side of his body below armpit. He is also not attributed any injury to the injured witnesses. Noor Muhammad, co -accused, who was attributed fatal injuries to Muhammad Kamran deceased was, however, acquitted by the trial court. Despite having ample opportunity to cause more injuries to the deceased, the appellant fired only once causing single injury to the deceased. The medical officer (PW -5), who conducted post-mortem examination, observed a solitary firearm injury with its corresponding exit on the dead body of the deceased. Certainly, this fact serves as a mitigating circumstance where penalty of death was unjustified rather a legal sentence i.e. life imprisonment was apt, which

aspect of the matter was overlooked by the High Court. Therefore, the death sentence awarded to the appellant by the trial Court and upheld by the High Court, in our candid view, is not sustainable in the eyes of law.

Conclusion: Solitary firearm injury on the dead body of the deceased, serves as a mitigating circumstance in favour of accused entitling him lesser punishment.

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15. **Supreme Court of Pakistan**
Sagheer Ahmed v. The State and another
Criminal Petition No.1241-L of 2023.
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1241_l_2023.pdf

Facts: The petitioner has invoked the jurisdiction of this Court under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, calling in question the order of the Lahore High Court, Lahore, whereby his application for bail after arrest in case FIR for the offense under Section 9(1)(3)(c) of the Control of Narcotic Substances Act, 1997 was dismissed.

Issues: i) What are the provisions relating to the sending of samples of narcotics substance to the forensic Science Laboratory and reflecting time limitation for dispatching the same?
ii) When the precious right of liberty can be denied?

Analysis: i) The provisions relating to the sending of samples to the forensic Science Laboratory are provided in Rule 4(2) of Control of Narcotic Substances (Government Analysts) Rules, 2001, which provides that the samples may be dispatched for analysis under cover of Test Memorandum specified in Form-I at the earliest, but not later than seventy-two hours of the seizure.
ii) The liberty of a person is a precious right guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973. The denial of this right should only occur when guilt is established without a second thought.

Conclusion: i) See above in analysis portion.
ii) The precious right of liberty of a person can only be denied when guilt is established without a second thought.

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16. **Supreme Court of Pakistan**
Shaukat Hussain v. The State thr. PG Punjab & another.
Cr. Appeal No.425/2019 & Cr. Petition No.632/2020
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._425_2019.pdf

Facts: Through this appeal, by leave of the Court, the appellant called in question the

judgment passed by the Lahore High Court, Rawalpindi Bench, whereby criminal appeal filed by him was dismissed, however, his death sentence was altered into imprisonment for life..

Issues: i) Whether delayed report of occurrence to the Police by the eye witnesses evolves the chances of deliberations and consultations?
ii) Whether upon same set of evidence the co-accused persons can be awarded with different treatments of conviction or acquittal?
iii) Whether withholding the best evidence/star witness can cause dent to the prosecution story?

Analysis: i) If there is a delay of about four hours in reporting the crime to the Police whereas Police Station was situated at a distance of about 20 kilometers from the place of occurrence. No explanation at all was furnished for causing delay in reporting the crime to the Police. The contention that approximately four hours delay in lodging FIR is a normal thing does not appeal to the mind. Had the matter been reported within reasonable time, the police would have easily reached at the place of occurrence within about an hour. Why the matter has not been reported immediately by the eye-witnesses is a question which could not be satisfactorily explained by the witnesses during their evidence. In the circumstances, chances of deliberations and consultations before reporting the matter to the Police cannot be ruled out (…)
ii) On the same set of evidence, the accused persons have been acquitted of the charges, whereas the appellant has been convicted and sentenced, benefit whereof should have also been extended to the appellant (…)
iii) The injured shown as a witness in the calendar of witnesses in the charge sheet has not been produced by the prosecution for evidence in support of its case without any cogent and plausible reason, thus has withheld the best evidence. The case of the prosecution is on weak footings and for the reasons aforementioned, the benefit of doubt arises in favour of the appellant (…)

Conclusion: i) Delay in report of occurrence to the Police by the eye witnesses evolves the chances of deliberations and consultations.
ii) Upon same set of evidence the co-accused persons cannot be awarded with different treatments of conviction or acquittal.
iii) Withholding the best evidence/star witness can cause dent to the prosecution story.

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17. **Lahore High Court**
Municipal Committee etc. v. Jam Brothers
C.R No.326 of 2022/BWP
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2024LHC1152.pdf

Facts: The respondent-contractor filed application before the learned Trial Court to make

the award of the Arbitrator as rule of Court. Trial Court remitted the matter back to the Arbitrator in terms of section 16 of the Act, 1940. The Arbitrator resubmitted the award before the learned Trial Court. After considering objections of the Committee and hearing the arguments of both sides, the learned Trial Court, accepted the application of the respondent-contractor and made the award as rule of the court. Being dissatisfied with the decision of the learned Trial Court, the Committee filed an appeal but without any success as the same was dismissed by the learned Additional District Judge, hence this petition.

Issues: i) When a party takes any step, towards satisfaction of the decree, whether it can challenge the validity of the said decree?
ii) What is role of the Civil Courts under the Arbitration Act, 1940?
iii) What is duty of the Court under the provisions of the Act, 1940 while dealing with the award?
iv) When the High Court in exercise of its revisional jurisdiction could interfere with the concurrent findings of the Courts below?

Analysis: i) It is well established by now that when a decree holder takes any step, even partial, towards satisfaction of the decree, it cannot challenge the validity of the said decree. (…) Undeniably, appellants freely and explicitly acknowledged the claim of respondent No.1, payment of partial claim to respondent and also showed readiness to settle the outstanding amount, which is tantamount to admission of its liability regarding the decretal amount. Needless to say that an admission/statement/undertaking, by a party, during the judicial proceedings has to be given sanctity while applying the principle of legal estoppel and estoppel by conduct as well as to respect moral and ethical rules. Hence, at any subsequent stage, a party cannot turn around to wriggle out from the consequence of such admission. If disclaimer therefrom is allowed as a matter of right, then it will definitely result into distrust of the public litigants over the judicial proceedings.

ii) It is well settled by now that civil court cannot sit as court of appeal on the decision of an Arbitrator as the Arbitrator is considered best Judge of the factual controversy between the parties. (…) The role of the courts under the Arbitration Act, 1940 principally is of supervisory nature and not that of appellate power under C.P.C

iii) It is well entrenched by now that while dealing with a matter under the provisions of the Act, 1940, the prime duty of the Court is to uphold the award instead of setting it aside for trivial reasons. (…) Reliance in this regard is placed on the cases reported as Durga Prosad Chamria and another v. Sewkishendas Bhattar and others (PLD 1949 Privy Council 187) and Ashfaq Ali Qureshi v. Municipal Corporation Multan and another (1984 SCMR 597). In the former case, the Privy Council while dealing with the powers of the court to set aside an award has inter-alia held as under:- However, that may be, their Lordship are satisfied that the two points of law as to which it is said that the Arbitrator's error vitiates the award would be contrary to the well-established principles such as are laid

down in In re King and Duveen (1) and F R Absalom Ltd. V. Greet West (London) Garden Village Society (2) for a Court of law to interfere with the Award even if the Court itself would have taken a different view of either of the points of law had they been before it.

iv) Concurrent findings of facts recorded by the courts below cannot be upset by this Court in exercise of its revisional jurisdiction in a casual manner until and unless the same are proved to be perverse or arbitrary or the same are based on misreading or non-reading of evidence which is not the position in the case in hand.

Conclusions: i) When a party takes any step, even partial, towards satisfaction of the decree, it cannot challenge the validity of the said decree.

ii) The role of the courts under the Arbitration Act, 1940 principally is of supervisory nature and not that of appellate power under C.P.C.

iii) While dealing with a matter under the provisions of the Act, 1940, the prime duty of the Court is to uphold the award instead of setting it aside for trivial reasons.

iv) Concurrent findings of facts recorded by the courts below cannot be upset by High Court in exercise of its revisional jurisdiction in a casual manner until and unless the same are proved to be perverse or arbitrary or the same are based on misreading or non-reading of evidence.

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18. **Lahore High Court**
Sanam Javaid Khan through attorney Rubina Javaid v.
Returning Officer for Senate Election 2024 & another
Election Appeal No.18381 of 2024
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1092.pdf

Facts: The appellant, for the purpose of contesting elections of Senate-2024 for the Women Reserve Seat from Province of Punjab, submitted her nomination papers through proposer and seconder in the office of Returning Officer. The scrutiny of the nomination papers was conducted and the same were rejected; hence, the instant appeal.

Issues: i) Whether nomination papers can be rejected on the ground that candidate could not produce legible copy of CNIC?

ii) Whether nomination papers of a candidate can be rejected on ground that candidate has not submitted assets and liabilities of husband when both candidate and her husband are in jail?

iii) Whether to contest election is a fundamental right?

Analysis: i) The second ground making basis of rejection of nomination papers is that the appellant could not produce the legible copy of CNIC; the same is not tangible defect and on such ground the nomination papers, in presence of observations of the Supreme Court of Pakistan order dated 26.01.2024 passed in

C.P.L.A.No.184/2024, cannot be rejected.

ii) The 'emphasized' line that "I am in jail since last more than 10 months "is sufficient to extend discretionary relief to the appellant, because in exigencies including illness, imprisonment and unavoidable circumstances, one cannot be knocked out and cannot be deprived of his/her fundamental right, in the present case, to contest the election. Even, it is also an admitted fact that husband of the appellant was also imprisoned in 9th May incident and he could not submit his Returns for the year 2023. In such scenario, when, statedly, the statements of accounts, Assets and Liabilities was presented before the Returning Officer at the time of scrutiny, the same should have been considered, because non-submission of Returns by the husband of the appellant with regards to preceding year i.e. 2023 was due to inevitable circumstance, not in control either of the appellant or of her husband

iii) To contest election is a fundamental right as guaranteed by Article 17(2) of the Constitution of Islamic Republic of Pakistan and the same has been upheld by the Supreme Court of Pakistan in its judgments…

Conclusion: i) Nomination papers cannot be rejected on the ground that candidate could not produce legible copy of CNIC as this is not a tangible defect.

ii) See under analysis no. ii.

iii) To contest election is a fundamental right as guaranteed by Article 17(2) of the Constitution of Islamic Republic of Pakistan.

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19. **Lahore High Court**
Muhammad Hanif Tayyab v. Insha Ullah, etc.
Crl. Appeal No.10214/2022
Mohib Ullah v. The State, etc.
Crl. Appeal No.12109/2022
Miss. Justice Aalia Neelum, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2024LHC1076.pdf

Facts: This single judgment will dispose of Crl. Appeals filed by appellants against their "convictions & sentences" as both the matters have arisen out of one and the same judgment passed by learned Judge Anti-Terrorism Court-I, Lahore/trial court.

Issues: i) Whether conviction on the basis of broken chain of safe custody of allegedly recovered case property and parcel of sample is possible?

ii) Where safe custody of allegedly recovered case property is not proved, whether conclusiveness and reliability of report of Bomb Disposal Technician would be vitiated?

iii) Whether police officials are as good witnesses unless it has been proved that they are having ill will or animosity against the accused/convict?

iv) Whether non-appearance of accused under section 340(2) Cr.P.C., for disproving allegation against him, does create any inference against him yet when he has taken plea of false implication?

v) Whether merely producing/getting exhibited document in the court and proving the same are one and the same thing?

Analysis: i) Now it is crystal clear that two parcels said to contain defused hand grenade and detonating assembly were deposited by PW-3 on 07.04.2021 but PW-1 issued report Ex.PA qua parcels which were deposited on 06.04.2021 and not on 07.04.2021. Therefore, safe custody as well as transmission of two parcels said to contain defused grenade and detonating assembly from police station to the office of Bomb Disposal Squad, has not been proved in this case. Now law is well settled on the point that unbroken chain of "safe custody of allegedly recovered case property and parcel of sample" is to be proved otherwise, conviction is not possible and it is rightly so because recovery of explosive substance is not a mere corroboratory piece of evidence rather it constitutes the offence itself and entails punishment.

ii) Since safe custody of two parcels of samples said to contain defused hand grenade and detonating assembly allegedly recovered from the possession of appellant has not been proved, therefore, conclusiveness and reliability of the report of Bomb Disposal Technician (Ex.PA) has been vitiated and said report is not capable of sustaining conviction to the extent of appellant; hence, now there is no need to discuss other merits of the case to his extent.

iii) Now coming to the case of Mohib Ullah (appellant in Crl. Appeal No.12109/2022, hereinafter to be referred as "appellant"), in order to prove aforementioned recovery of I.E.D. (P-3) and pistol .30 bore (P-4), taken into possession vide recovery memo (Ex.PD), prosecution produced complainant/PW-4 and PW-3, who categorically deposed and supported case of the prosecution against the appellant through their statements recorded during trial of the case, their testimony remained un-shattered in spite of searching cross-examination and its credibility could not be shaken; any enmity or animosity of said witnesses against the appellant also could not come on record. Needless to observe that police officials are as good witnesses unless it has been proved that they are having ill will or animosity against the accused/convict.

iv) Although, non-appearance of accused under Section: 340(2) Cr.P.C. for disproving allegation levelled against him, does not create any inference against him yet when he has taken plea of false implication and his abduction as well as detention for a long period, then regarding the same, he is the best witness to prove his said version by appearing so and his non-appearance amounts to withhold the best evidence.

v) DW-3 produced aforementioned rapt (Ex.DE) yet it is relevant to mention here that he is not scribe of said rapt rather brother of the appellant got recorded the same through application and Akhlaq Ahmad A.S.I./Duty Officer of Police Post: City Fateh Jang was scribe of said rapt but neither Aman Ullah (mentioned above) nor scribe of said rapt i.e. Akhlaq Ahmad A.S.I. was produced to prove contents of said rapt; merely producing/getting exhibited document in the court and proving the same are not one and the same thing rather different phenomena.

Conclusion: i) Conviction on the basis of unbroken chain of safe custody of allegedly

recovered case property and parcel of sample is not possible.
ii) Where safe custody of allegedly recovered case property is not proved, conclusiveness and reliability of report of Bomb Disposal Technician would be vitiated.
iii) Police officials are as good witnesses unless it has been proved that they are having ill will or animosity against the accused/convict.
iv) See above analysis clause no. iv.
v) Merely producing/getting exhibited document in the court and proving the same are not one and the same thing rather different phenomena.

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20. **Lahore High Court**
Aqeel alias Kaka, etc. v. The State, etc.
Crl. Revision No.24470/2023
Miss. Justice Aalia Neelum, Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2024LHC1224.pdf

Facts: Through instant revision petition, the petitioners assailed the order of trial court, whereby, the application under Section 23 of the Anti-Terrorism Act, 1997 filed by present petitioners, was dismissed vide impugned order.

Issues: i) Whether merely due to magnitude of the effects of the crime, it can be termed as "terrorism" falling in the ambit of Section 6 of the Anti-Terrorism Act, 1997 and punishable under Section 7 of the Act ibid, if it has been committed due to personal enmity/vendetta?
ii) Whether firing near or around i.e. in the surrounding of the court is mentioned in Clause 4 (iii) of 3rd Schedule of Anti-Terrorism Act, 1997 and if it is not mentioned whether the same can be added therein by the court?
iii) Whether in special law, dealing with particular subject, courts are required to depart from its literal construction?

Analysis: i) Almost every crime spreads feelings of insecurity, harassment and fear however quantum of said effect i.e. feelings varies from person to person and area to area e.g. sometime even pallet fired from air gun hitting bird or animal resulting into oozing of the blood, can cause fear to the person who has never seen such episode earlier in his life and not acquainted with firearm weapons as well as their use whereas the person familiar with such events will not take any serious note of it even if assault rifle like Kalashnikov has been used for committing the occurrence, therefore, merely due to magnitude of the effects of the crime, it cannot be termed as "terrorism" falling in the ambit of Section: 6 of the Anti-Terrorism Act, 1997 and punishable under Section: 7 of the Act ibid, if it has been committed due to personal enmity/vendetta.
ii) However, if prima-facie, intention to have firing in or at the court premises is not reflecting from the act constituting crime rather it appears that occurrence was orchestrated to target opponents due to personal enmity outside the court and as a bye product incidentally some bullets hit the outer wall of the court premises or outer wall of court room from distance, then there is absolutely no intention to have firing in the court and in such state of affairs, act constituting the

offence/crime irrespective of the huge loss of lives or other things, would not be triable by Anti-Terrorism Court under its 3rd schedule. It is relevant to mention here that firing in the court has been mention in 3rd schedule of AntiTerrorism Act, 1997 for making the case triable by Anti-Terrorism Court whereas "firing near or around i.e. in the surrounding of the court" is not mentioned in Clause 4 (iii) of 3rd Schedule of Anti-Terrorism Act, 1997 and same cannot be added therein by the court;

iii) It goes without saying that in special law, dealing with particular subject, courts are required not to depart from its literal construction and it will be narrowly interpreted.

Conclusion: i) Merely due to magnitude of the effects of the crime, it cannot be termed as "terrorism" falling in the ambit of Section 6 of the Anti-Terrorism Act, 1997 and punishable under Section 7 of the Act ibid, if it has been committed due to personal enmity/vendetta?

ii) Firing near or around i.e. in the surrounding of the court is not mentioned in Clause 4 (iii) of 3rd Schedule of Anti-Terrorism Act, 1997 and the same can be added therein by the court.

iii) In special law, dealing with particular subject, courts are required not to depart from its literal construction and it will be narrowly interpreted.

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21. **Lahore High Court**
Muhammad Musharaf Hassan v. The State, etc.
Crl. Rev. No.16003 of 2024
Justice Miss Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2024LHC1058.pdf

Facts: Through instant Criminal Revision, the petitioner prayed for setting aside the order passed by the Additional Sessions Judge whereby the respondent No.2 was not summoned by the court to face trial in a private complaint filed by the petitioner under sections 500, 501, 34 PPC against the respondents Nos.2 & 3.

Issues: i) Whether an advocate can be held responsible for the derogatory remarks levelled in the plaint?

ii) Whether the high court can interfere in the order of trial court in exercise of its revisional jurisdiction under sections 435, 439 Cr.P.C?

Analysis: i) An Advocate cannot be held responsible for any derogatory allegations levelled in the plaint.

ii) The order, containing valid reasons, cannot be interfered with by the High Court in the exercise of limited revisional jurisdiction under sections 435, 439 Cr.P.C., unless and until the same is illegal, perverse, and without jurisdiction.

Conclusion: i) An Advocate cannot be held responsible for any derogatory allegations levelled in the plaint.

ii) The order, containing valid reasons, cannot be interfered with by the High Court in the exercise of limited revisional jurisdiction under sections 435, 439 Cr.P.C., unless and until the same is illegal, perverse, and without jurisdiction.

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22. **Lahore High Court**
Ghzanfar Ali alias Manzoor, etc. v. The State, etc.
Crl. Appeal No.67578 of 2019
Justice Miss Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2024LHC1202.pdf

Facts: Appellants were involved in case F.I.R. registered under Sections 302, 353, 186, 148, 149 PPC and section 7 of the Anti-Terrorism Act, 1997 and were tried by the Judge, Anti-Terrorism Court. The trial court seized with the matter in terms of the judgment convicted each of the appellants, and sentenced them. Feeling aggrieved by the trial court's judgment, the appellants has assailed their convictions by filing instant Criminal Appeal.

Issue: What will be the effect if the witnesses nominate the unknown accused before the identification parade?

Analysis: It cannot be disputed that in cases relating to unknown accused/robbers, the prosecution witnesses' identification of the accused is the main evidence. The prosecution has to satisfy itself that the witnesses were in a position to identify the culprits, and before the identification parade, they were not known to them. If the witnesses nominated the unknown accused before the identification parade, the identification of the unknown accused during identification proceedings by the witnesses should not be accepted. In the cases of unknown accused, any claim that the witnesses identified the culprits for the offence has to be examined by the Court carefully and diligently concerning the circumstances of the particular case.

Conclusion: If the witnesses nominated the unknown accused before the identification parade, the identification of the unknown accused during identification proceedings by the witnesses should not be accepted.

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23. **Lahore High Court**
Muhammad Asif v. The State
Crl. Appeal No.6732-J of 2019
Justice Miss Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2024LHC1184.pdf

Facts: The appellant was tried by the learned Additional Sessions Judge. The trial court convicted the appellant under section 302(b) PPC, and sentenced him to undergo imprisonment for life as Tazir with the direction to pay compensation to the legal heirs of the deceased and in case of default in payment thereof, to undergo six months S.I further. The appellant has assailed his conviction by filing instant criminal appeal.

Issues: i) Whether statement given on oath with the help of notes prepared by the witness is against the law on the subject and a witness is entitled to refresh his memory before or during his examination through notes he prepared for the purpose?
ii) Whether positive report of Punjab Forensic Science Agency has any value when safe custody of same weapon of the offence is not proved?
iii) Whether mere absconsion is sufficient to prove the guilt of an accused?

Analysis: i) PW-13 gave his deposition during his examination-in-chief, with the help of notes he prepared for the purpose. Now, the question is whether his testimony can be treated as testimony by the provisions contained in Article 71 of the Qanun-e-Shahadat Order, 1984. The tenor of the language used in the first proviso to Article 71 of the Qanun-e-Shahadat Order, 1984 leads this court to the conclusion that evidence contemplated under Article 71 of the Qanun-e-Shahadat Order, 1984 envisages personal testimony based on the memory of the person who has seen, heard, or perceived a fact. The statement given on oath with the help of notes prepared by PW13 appears to be against the law on the subject…To consider whether a witness is entitled to refresh his memory before or during his examination. Provisions contained in Article 155 of the Qanun-e-Shahadat Order, 1984… In the instant case, no evidence has been given that this witness made entries in the Register No.19 kept for the purpose of the malkhana. PW-13 deposed that his statement under section 161 of Cr.P.C. was recorded by the investigating officer. PW-8 the investigating officer deposed during examination-in-chief… So, from the above deposition of PW-8 the investigating officer, it reveals he did not depose a single word that he recorded statement under section 161 of Cr.P.C. of PW-13 on 17.12.2014 to the effect that PW-4 returned from PFSA and handed over the parcels to PW-13 who kept the same in safe custody, nor he deposed that on 22.12.2014 he recorded statements PW-4 and PW-13 revealing that PW-13 handed over parcels to PW-4 and PW-4 deposited the same with PFSA. It is also necessary that when case property is redeposited in the Mallkhana, entry in the Malkhana Register is required to be made, and a dire necessity has been cast upon the prosecution to produce in Court the abstract of the Malkhana Register for ensuring, dispelling of, any aura of skepticism seeping into the prosecution case, especially vis-a-vis safe custody of the case property (P-7), "being," re-deposited in the Malkhana. Therefore, in the present case, provisions of Article 155 of the Qanun-e-Shahadat Order, 1984 would have no application…
ii) Pointing out the above deposition of prosecution witnesses it reveals that the prosecution did not prove that the parcel of the crime empty (P-7) was kept in safe custody. Due to the lack of this evidence, it cannot be held that the alleged parcel of crime empty (P-7) was re-deposited in Malkhana, and its benefit will go to the accused. This creates doubt about the genuineness and safe custody of the crime empty (P-7) recovered from the place of occurrence…The prosecution has to establish by convincing evidence that the alleged parcels of pistol (P-5), alongwith three live bullets (P-6/1-3) and crime empty (P-7), were kept in safe

custody. There is no explanation for this failure to establish safe custody of the parcels pistol (P-5), alongwith three live bullets (P-6/1-3) from the time of seizer on 27-05-2016 till its deposit with the Moharrar and after that its production before court. It is not clear where the parcels of pistol (P-5), alongwith three live bullets (P-6/1-3), were kept. The prosecution has to establish by convincing evidence that the alleged parcels of pistol (P-5), alongwith three live bullets (P-6/1-3), were the same, recovered at the pointing of the appellant and were kept in safe custody. There is no explanation for this failure to establish safe custody of the pistol (P-5), alongwith three live bullets (P-6/1-3) from the time of the seizer on 27-05-2016 till its production in the court. Mere oral evidence of the prosecution witnesses, i.e., PW-17 the investigating officer, PW-14), and PW-15 as to the recovery of pistol (P-5), alongwith three live bullets (P-6/1-3) does not discharge the heavy burden of responsibility, which lies on the prosecution. It is the considered opinion of the court that the inconsistencies described above and contradictions considered cumulatively do lead to irresistible influence that the prosecution has not been able to prove safe custody of the parcels of pistol (P-5), alongwith three live bullets (P-6/1-3) recovered from the possession of the accused-appellant through material and cogent evidence. This contradiction went to the root of the case. Thus, there is no evidence to connect the Firearms & Toolmarks Examination Report (Ex. PZ) with the substance seized from the possession of the appellant. I am, therefore, of the view that the recovery of 30-bore pistol P-5 and three live bullets (P6/1-3) and the positive report of Punjab Forensic Science Agency, Lahore (Exh. P2) are of no avail to the prosecution.

iii) However, the factum of absconding, even if established, could only be used as corroborative evidence and was not a substantive piece of evidence. It is an established principle of law that mere absconsion is not proof of the guilt of an accused. Reliance is placed on “Rasool Muhammad v. Asal Muhammad and another” (PLJ 1995 SC 477). From the above, it can be ascertained that the prosecution failed to bring the appellant's guilt through straightforward, confidence-inspiring, and corroborative evidence.

Conclusion: i) Statement given on oath with the help of notes prepared by the witness is against the law on the subject and a witness is entitled to refresh his memory before or during his examination but not from notes he prepared for the purpose.

ii) Positive report of Punjab Forensic Science Agency has no value when safe custody of same weapon of the offence is not proved.

iii) It is an established principle of law that mere absconsion is not proof of the guilt of an accused.

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24. **Lahore High Court**
The State v. Imtiaz Ullah
Murder Reference No.130 of 2021
Imtiaz Ullah v. The State
Criminal Appeal No.60592 of 2021
Mr. Justice Sadaqat Ali Khan, Mr. Justice Asjad Javaid Ghural

https://sys.lhc.gov.pk/appjudgments/2024LHC1053.pdf

Facts: Appellant filed Criminal Appeal against his convictions and the trial Court has sent Murder Reference for confirmation of his death sentence or otherwise, which are being decided through this single judgment.

Issues: i) Whether there could be any chance of substitution of an accused in case got registered by complainant, regarding night time murder of his son, against his son in law?
ii) Whether the minor discrepancies occurring in statements of prosecution witnesses may be deemed fatal to prosecution case?
iii) What would be impact upon prosecution case of recovery of crime weapon, which is effected on pointation of accused, but report of Punjab Forensic Science Agency qua matching of the crime empties is in negative?

Analysis: i) If an accused has close relationship of being son in law of complainant, there is no question of his misidentification despite the fact that occurrence took place at nighttime, because the complainant cannot take risk to falsely involve such accused in the murder case of his son to ruin the matrimonial life of his daughter, leaving actual culprit scot free.
ii) The minor and general discrepancies occur in every case when witnesses are cross-examined after a long time of the occurrence.
iii) If recovery of crime weapon is effected on pointation of the accused, but report of Punjab Forensic Science Agency qua matching of the crime empties is in negative, then such recovery of crime weapon is inconsequential.

Conclusion: i) If accused is son in law of complainant having been implicated in night time murder of complainant's son, then substitution of such an accused is a rare phenomenon in these circumstances and in such like cases.
ii) The minor discrepancies occurring in statements of prosecution witnesses cannot be deemed fatal to prosecution case.
iii) If the recovery of crime weapon is effected on pointation of the accused, but report of Punjab Forensic Science Agency qua matching of the crime empties is in negative, then such recovery of crime weapon is not fatal to the prosecution case.

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25. **Lahore High Court**
The State v. Ghaffar Abbas alias Ghaffar Ahmed, Muhammad Suleman alias Mani
Murder Reference No.35 of 2022
Ghaffar Abbas alias Ghaffar Ahmed etc. v. The State etc.
Criminal Appeal No.435 of 2022
Mr. Justice Sadaqat Ali Khan, Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2024LHC1060.pdf

Facts: The learned Trial Court submitted the murder reference under section 374 Cr.P.C seeking the confirmation or otherwise of the sentence of death awarded to the two

of the convicts in case FIR registered under sections 302, 34 P.P.C. and feeling aggrieved, appellants lodged the Criminal appeal assailing their convictions and sentences.

Issues: i) What can be inferred if in column "Brief Summary of Facts" of Inquest Report neither names of assailants nor names of eye witnesses have been mentioned?
ii) What inference can be drawn if rough and scaled site plans of place of occurrence do not show the houses of eye-witnesses?
iii) What is legal value of recovery of pistols on pointing out of the accused in presence of negative report?

Analysis: i) The Inquest Report carries immense significance which is considered an integral part of method/system in every murder case to keep an eye on the subsequent possible fabrication in record, it gives some reflection of the witnesses in attendance, the weapon used in commission of crime, the detail of injuries on the body of the deceased, presence of crime empties etc. at the crime scene, if the dead body is lying at the spot, the nature of weapon and summary of the facts. Such information can easily be gathered from perusal of its relevant columns. If in column "Brief Summary of Facts" of Inquest Report neither names of assailants nor names of eye witnesses have been mentioned nor reason for such lapses is available, then an inference can be drawn that till then, names of the complainant, eye-witnesses and accused were unknown and it was an unseen occurrence.

ii) If rough and scaled site plans of place of occurrence do not show the houses of eye-witnesses around the place of occurrence then it can be inferred that the witnesses are chance witnesses and they have to establish their presence at the time and place of occurrence with their stated reasons.

iii) Recovery of pistols on pointing out of the accused in presence of negative report is not only inconsequential rather draws adverse inference.

Conclusion: i) If in column "Brief Summary of Facts" of Inquest Report regarding facts of the case neither names of assailants nor names of eye witnesses have been mentioned nor reason for such lapses is available, then an inference can be drawn that till then, names of the complainant, eye-witnesses and accused were unknown and it was an unseen occurrence.

ii) If rough and scaled site plans of place of occurrence do not show the houses of eye-witnesses around the place of occurrence then it can be inferred that the witnesses are chance witnesses.

iii) Recovery of pistols on pointing out of the accused in presence of negative report is not only inconsequential rather draws adverse inference.

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26. **Lahore High Court**
Commissioner Inland Revenue v. Security General Insurance Company Limited.
I.T.R No.186/2016
Mr. Justice Shahid Karim, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2017LHC5807.pdf

Facts: The respondents in different Income Tax References filed an appeal to the Appellate Tribunal Inland Revenue which engaged the same questions of law. The Members of the Tribunal had a difference of opinion and the matter was thereafter referred to a Full Bench of the Appellate Tribunal which rendered the judgment on the question of law in the favour of respondents. Now, the appellant have assailed the judgment of the Full Bench of the Appellate Tribunal.

Issues: i) Whether section 99 of the Income Tax Ordinance 2001 is a special provision relating to insurance business?
ii) Whether section 26(a) of Income Tax Ordinance 1979 is in pari materia of section 99 of the Income Tax Ordinance 2001?
iii) Whether the Fourth Schedule of Income Tax Ordinance 2001 refers to the computation of profits and gains but does not make any reference to the computation of tax payable?

Analysis: i) Section 99 of Income Tax Ordinance is a special provision relating to insurance business and the taxpayers in these cases are undoubtedly carrying on insurance businesses and there is no cavil that the profits and gains of these taxpayers shall be computed in accordance with the rules in Fourth Schedule which too provides for special provisions regarding computation of profits and gains of insurance businesses.
ii) Section 26(a) of Income Tax Ordinance 1979 is in pari materia to Section 99 with the only difference that the words “and the tax payable thereon” have been deleted from Section 99.It may be stated that according to the taxpayers/insurance businesses in these cases, since there are no provisions regarding payment of tax and its determination in the Fourth Schedule, general provisions in the First Schedule would be applicable and the taxpayers would be entitled to the benefit regarding dividend income given in the First Schedule.
iii) The Fourth Schedule refers to the computation of profits and gains but does not make any reference to the computation of tax payable. The computation of tax liability will have to be made on the basis of the general provision of First Schedule. First Schedule provides a different rate of tax in respect of dividend income and if the First Schedule is to be applicable, the appellant cannot be heard to argue that in respect of insurance businesses they will not be entitled to the benefit in the rate of tax provided by the First Schedule while that benefit would be applicable and extended to other similarly placed companies and taxpayers. The provisions of First Schedule would be engaged and the benefit prescribed therein would be applicable to the case of insurance businesses as well. Therefore,

although the current Section 99 does not contain the words "and the tax payable thereon", this would not make any difference, in that, at the relevant time to which these tax references relate there were no provisions regarding the tax payable on the business of insurance in the Fourth Schedule.

Conclusion: i) Section 99 of Income Tax Ordinance is a special provision relating to insurance business and the taxpayers in these cases are undoubtedly carrying on insurance businesses.
ii) Section 26(a) of Income Tax Ordinance 1979 is in pari materia to Section 99 with the only difference that the words "and the tax payable thereon" have been deleted from Section 99.
iii) The Fourth Schedule refers to the computation of profits and gains but does not make any reference to the computation of tax payable. The computation of tax liability will have to be made on the basis of the general provision of First Schedule.

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27. **Lahore High Court**
Muhammad Azram v. Muhammad Altaf and another
Civil Revision No.573-D of 2014
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC1120.pdf

Facts: The petitioner instituted a declaratory suit seeking cancellation of sale and gift mutations alienating suit property by his mother in favour of respondents No.1 and 2 respectively. The said suit was ultimately decreed, however, the consequent appeal preferred by the respondent was allowed. Hence, the judgment of learned Appellate Court is impugned in this petition under Section 115 of the Code of Civil Procedure, 1908.

Issues: i) What is the limitation to file a suit for declaration and when it commences?
ii) What is the scope of Section 42 of the Specific Relief Act, 1877?
iii) While analyzing the contrary conclusions of the courts below in exercise of revisional jurisdiction, what would be the touchstone for extending the preference?

Analysis: i) Right to sue accrues to a person against the other for declaration of his right, as to any property, when the latter denies or is interested to deny his right. The limitation of a suit under the above mentioned provision is to be regulated and governed by Article 120 of the Limitation Act, 1908.
ii) Section 42 of the Specific Relief Act, 1877 ordains that any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled.
iii) In case where the divergent views of the courts below exist as their conclusion are contrary to each other, then High Court, while exercising revisional

jurisdiction, is supposed to make comparative analysis of both the judgments in order to determine their validity on the touchstones of Section 115 of C.P.C. It is cardinal principle of law that in the matter of giving preference to the judgments of lower courts, while analyzing the same in exercise of revisional jurisdiction, the preference and regard is always given to the findings of the appellate court, unless those are suffering with any legal infirmity or material irregularity.

Conclusion: i) Article 120 of the Limitation Act, 1908 provides six years period for filing suit for declaration, which commences from the time of accrual of such right.
ii) Under Section 42 of the Specific Relief Act, 1877, the right to sue accrues to a person against the other for declaration of his right, as to any property, when the latter denies or is interested to deny his right.
iii) It is cardinal principle of law that in the matter of giving preference to the judgments of lower courts, while analyzing the same in exercise of revisional jurisdiction, the preference and regard is always given to the findings of the appellate court, unless those are suffering with any legal infirmity or material irregularity.

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28. **Lahore High Court**
Muhammad Tariq Khan v. The National Bank of Pakistan through President/CEO, etc.
W.P.No.2832 of 2021
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC1165.pdf

Facts: This single judgment shall govern two writ petitions raising similar questions of fact and law as well as arising out of common orders. Both the petitioners respectively were joint custodian/ Manager (Operations) and Cashier in the bank, where an incident of robbery took place. Initially, the petitioners were suspended from service and subsequently they were also arrayed as accused in the aforementioned criminal case. Moreover, they were eventually dismissed from service on culmination of second departmental inquiry. In the meanwhile, the petitioners were tried and convicted in the said criminal case; however they were acquitted from the criminal charges in appeals. Thereafter, the fresh representations/appeals filed by the petitioners could not be decided, whereupon they approached the Federal Service Tribunal, Islamabad, where their appeals were dismissed being not maintainable, which orders were challenged before the Supreme Court of Pakistan but relevant civil petitions were dismissed. The petitioners then filed their respective constitutional petitions before this Court, which were allowed with the observation that the Bank shall hold a fresh inquiry. On completion of inquiry, the petitioners were found guilty and they were again dismissed from service. The petitioners submitted their representations/appeals before the departmental authority, which remained unattended and ultimately they filed constitutional petitions before this Court, which were initially disposed of

and ultimately dismissed, hence these writ petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

Issues: i) Whether the order of Government, body or authority is amenable to the writ jurisdiction under Article 199 of the Constitution, 1973, of the High Court in territorial jurisdiction of whom relevant order/action has affected a party?
ii) Whether National Bank of Pakistan Rules, 1980 are statutory in nature?
iii) What is effect of the National Bank of Pakistan Rules, 1980 qua the National Bank of Pakistan Staff Service Rules, 1973?
iv) Does there exist any legal impediment in conducting criminal and departmental/disciplinary proceedings side by side?

Analysis: i) If Government, body or authority passes any order or initiates an action at Federal capital but it affects the "aggrieved party" at the place other than the Federal capital, such party shall have a cause of action to agitate about his grievance within the territorial jurisdiction of the High Court in which said order/action has affected him.
ii) The National Bank of Pakistan Rules, 1980 are neither made by the Federal Government nor published in the official gazette, rather, these have been framed by the Board of the Bank pursuant to its executive authority in the nature of management or superintendence of the affairs of the bank and the policy making power.
iii) The National Bank of Pakistan Staff Service Rules, 1973 were serving as the conclusive terms and conditions of service of the employment for the National Bank of Pakistan. officers etc., when the Banks (Nationalization) Act, 1974 was enforced and said Rules of 1973 were specifically saved by virtue of the section 13(1) of the Act ibid. However, the Rules of 1973, have been repealed and section 6 of the General Clauses Act, 1897, clearly manifests that a change in the substantive law amounting to divest and adversely affect the vested rights of the parties shall always have prospective implication unless by express intention of the legislature such law has been made applicable retrospectively. National Bank of Pakistan Rules, 1980 do not in any manner contravene the National Bank of Pakistan Staff Service Rules, 1973, however; the expression "Notwithstanding" in section 13(2) of the Banks (Nationalization) Act, 1974 shall operate as a non obstante provision/ clause.
iv) The fate of departmental proceedings is always to be adjudged from the incriminating material placed in support of the charges against the delinquent employee. In departmental proceedings, standard of proof of the allegations cannot be equated with the standard of evidence against an accused in a criminal trial, but one cannot ignore the principle of natural justice while inflicting even meagre penalty upon a person as it amounts to deprive him from the right of earning guaranteed by the “Constitution”.

Conclusion: i) The order of Government, body or authority is amenable to the writ jurisdiction under Article 199 of the Constitution, 1973, of the High Court in territorial jurisdiction of whom relevant order/action has affected a party.
ii) The National Bank of Pakistan Rules 1980, do not enjoy the status of a statutory instrument.
iii) Even though National Bank of Pakistan Rules, 1980 are non-statutory, yet they have the overriding effect qua the National Bank of Pakistan Staff Service Rules, 1973.
iv) There is no legal impediment in conducting criminal and departmental/disciplinary proceedings side by side.

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29. **Lahore High Court**
Kousar Bibi v. The State and another
Criminal Misc. No.5175/B/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2024LHC1103.pdf

Facts: Through this application, the Petitioner seeks post-arrest bail in case FIR for an offence under section 9(1)-3(c) of the Control of Narcotic Substances Act, 1997.

Issues: i) Whether bail of an accused can be declined on the basis of criminal record of his family?
ii) Whether videography is a powerful tool in the fight against false implication in narcotics cases?
iii) What are the guidelines for leaders of every police team during operation?
iv) What is the dictate of combined reading of sections 27 and 33(4) of the Control of Narcotic Substances Act, 1997?

Analysis: i) If the accused does not have a criminal record and the list of cases pertains to his family members then he cannot be penalized for the wrongdoing of relatives. So, bail cannot be dismissed on this score.
ii) Videography is a powerful tool in the fight against false implication in narcotics cases, providing objective documentation of police encounters, supporting criminal investigations, and fostering transparency and accountability within law enforcement agencies. By capturing audio and video footage of interactions between officers and individuals suspected of drug-related offences, video recordings offer a reliable record of events that can help prevent wrongful arrests, unjust prosecutions, and violations of individuals' rights.
iii) Given the significant technological advancements, most police officers carry smartphones, which they can use to videograph their raids/operations. It is, therefore, directed as follows: (i) Henceforth, leaders of every police team shall ensure that all operations are videographed without exception. Specifically, in cases involving recovery of narcotics, they shall record a video of the entire operation unless circumstances beyond their control prevent them from doing so. (ii) Reasons for failing to record the recovery proceedings on video must be

specifically documented in the case diary.

iv) A combined reading of sections 27 and 33(4) of the CNSA reveals that the legislative scheme dictates that recovered narcotics should be produced before the Special Court at the time of remand. It has been observed that these provisions are often overlooked or disregarded in practice. All the Special Courts are directed to ensure strict compliance with them.

Conclusion: i) Bail of an accused cannot be declined on the basis of criminal record of his family.

ii) Videography is a powerful tool in the fight against false implication in narcotics cases.

iii) Leaders of every police team shall ensure that all operations are videographed without exception.

iv) A combined reading of sections 27 and 33(4) of the CNSA reveals that the legislative scheme dictates that recovered narcotics should be produced before the Special Court at the time of remand.

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30. **Lahore High Court**
Mehmood Ali v. Chairman Evacuee Trust Property Board and others
Writ Petition No.1479 of 2023
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1129.pdf

Facts: By invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the Petitioner has challenged order passed by the Additional Secretary Incharge, Ministry of Religious Affairs and Interfaith Harmony, Islamabad, whereby revision petition filed by him against the order of Deputy Administrator was dismissed. The Petitioner has also prayed to set aside orders passed by the Deputy Administrator.

Issue: Whether the Court can determine issue of change of tenancy, while interpreting Clause 3(III)(B)(b) of the Scheme for the Management and Disposal of Urban Evacuee Trust Properties, 1977, without first determining status of legal heirs of deceased tenant by authorities concerned?

Analysis: Bare reading of Clause III of the Management and Disposal of Urban Evacuee Trust Properties, 1977 reveals that District Officer, an Administrator or the Chairman concerned are empowered to change the tenancy with the conditions mentioned under said clause. While Clause (III)(B) of the Scheme ibid demonstrates that the tenancy of unit/sub-unit shall be alienable in favour of the legal heirs indicated in the schedule of tenancy deed subject to conditions incorporated under Clause (III)(B)(a) and (b) of the Scheme ibid.

Conclusion: The Court cannot determine issue of change of tenancy, while interpreting the Clause 3(III)(B)(b) of the Scheme for the Management and Disposal of Urban

Evacuee Trust Properties, 1977, without prior determination of status of legal heirs of deceased tenant by authorities concerned.

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31. **Lahore High Court**
M/s Bilawal Gull Builders v. Government of Punjab, etc.
Writ Petition No. 2009/2024
Mr. Justice Asim Hafeez, Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC1028.pdf

Facts: Present and other petitioners, claimed to be the bidders, hereby invoked Constitutional jurisdiction inter alia for seeking declarations against alleged actions/directions of the procuring agency(ies), issued in the course of tendering process initiated for awarding of civil works in various districts of southern part of province of Punjab. Fundamentally, and in common, the grievance is directed against demand made by the procuring agency, directing the petitioners – [a distinct class of bidders] -, to furnish "Quality Assurance Security" ('QAS') or "Quality Control Guarantee" („QCG") – nomenclature of the security(ies) demanded vary from case to case but raison d`être thereof indicates commonality. And likewise, quantum of security(ies) demanded in each case varies, depending upon the financial outlay of the tendered work(s).

Issues: i) Whether the procuring agency can demand additional performance security, in addition to the requirement of performance guarantee?
ii) Whether discretion or option of the bidder to pick security of its choice and convenience is permitted under Punjab Procurement Regulatory Authority Act, 2009 and Punjab Procurement Rules, 2014?
iii) Whether Punjab Government, Authority and procuring agency can frame policy guidelines, issue instructions and orders for making procurement efficient, economical and transparent?

Analysis: i) Securities demand, in lieu of occurrence of difference in quoted price and estimated cost, manifest a distinct class of security, different from the scope and requirement of performance guarantee. Not every bidder is asked to furnish additional securities - QAS or QCG - but only those bidders whose quoted bid prices are lower than declared estimated cost. This odd situation raises a red flag. In fact, additional security is in the nature of contingency security, requirement whereof triggers in case of differential. Additional security is solicited to hedge the exposure of the procuring agency and risks. This position is explained with an illustration. A contract is advertised, wherein estimated cost of the works was assessed at Rs.10.00 Million. A, a bidder, quotes bid of Rs.11.00 Million – no occasion for submission of additional security arises and if A"s bid is found lowest evaluated bid, contract would be awarded and then A was required to furnish performance guarantee. B, another bidder, quotes bid price of Rs.7.00 Million against estimated cost of Rs.10.00 Million. B"s bid is apparently the lowest bid but lower than estimated cost – exposure encountered was the differential of Rs.3.00 Million. B is required to submit additional security to the

extent of the exposure of the procuring agency to the extent of Rs.3.00 Million. B cannot lay claim to the contract on account of being the lowest bidder unless additional security is submitted. And till additional security is not submitted bid offered cannot be classified as responsive – under Rule 2 (aa) of the Rules, 2014 "responsive, means qualified for consideration on the basis of declared evaluation criteria and specified in the bid document or in the request for proposal". Once additional security is provided then the bid would be available for consideration. Acceptance of bid is next stage. An adjective, „successful", is added to the status of lowest bidder, provided the occasion arises and additional security demanded is submitted, upon acceptance of bid. Once bid was accepted and contract awarded, then the contractor was required to furnish performance guarantee – which for all intent and purposes is an independent security. Bidder B is a distinct class of bidders, in the context of contingency of the differential in quoted price and estimated cost. Submission that lowest quoted bid would per se make bidder successful and eligible for the award of contract is fallacious. In the context of present controversy, bid, whereby quoted price was lower than the estimated cost, is not responsive in the first place. Bidder with lowest quote is directed to provide the security for covering the differential – at that point of time there is no relevance of performance guarantee. If bidder meets the contingency and furnish requisite security, in the kind as directed, only then the bid would be classified as "lowest evaluated bid". And unless contingency is met, no occasion for acceptance of bid arises, notwithstanding howsoever lowest the quote was. Once condition is fulfilled, the bid is accepted and contract awarded, when status of the bidder elevates to the contractor, who is then obligated to provide performance guarantee. Bid will be accepted only once it is found responsive, and it cannot be treated as responsive unless the security demanded, for the difference between quoted price and estimated cost, is provided. Only upon acceptance of lowest evaluated bid an adjective "successful" is added to the credit of bidder. This is the reasoning of decision in the case of "Messers GHULAM MUHAMMAD & SONS v. WATER AND SANITATION AGENCY (WASA) FAISALABAD through Director General and others" (2022 MLD 1216) and affirmed by Division Bench is the case of A.M. Construction Company (Private) Limited (supra). Reasoning extended in the case of A.M. Construction Company (Private) Limited need to be construed in the context of aforesaid illustration, for understanding rational, plausibility and commercial prudence of demanding additional security. Mere use of the expression „additional performance security" in the operative part of the decision of A.M. Construction Company (Private) Limited would not obliterate or diminish the ratio decidendi of the decision. Judgment has to be interpreted in the context of its reasoning. We opine that takeaway from the decision in case of A.M. Construction Company (Private) Limited (supra) was the declaration contained in clause (i) of the operative part of the decision. Observations in rest of the paragraphs, from (ii) to (iv), are specific to the facts of the cases decided, which have had no precedential value and treated as mere obiter. It is reiterated that Rule 56 of the Rules, 2014 will not be construed or read

to obliterate the option of calling for additional security, whenever the difference in the quoted price and estimated cost occurs. And furnishing of quality assurance security will not absolve the bidder-cum-contractor from furnishing performance guarantee to the maximum of 10% of the contract price, envisaged under Rule 56 of the Rules, 2014. Rule 34 of the Rules, 2014 is not attracted. No element of discrimination is pointed. In fact, absolving bidders from the obligation of providing additional security, where quoted bid is found lower than estimated cost, would tantamount to inverse discrimination with other category of bidders.

ii) Now we take up the issue relating limiting the acceptability of security by the Banks, for the purposes of QAS or QCG security(ies) and / or performance guarantee. We confronted learned counsels to refer to any provision in the Act, 2009 and Rules, 2014 which extends discretion or option to the bidder to pick security of its choice and convenience, and instead learned counsels, referred to clause 10.1 of Standard Bidding Document, drafted by Pakistan Engineering Council (PEC). Clause 10.1 had no application in wake of prevalent procurement regime in province of Punjab. There is no cavil that preference to a particular kind of security depends on various factors, which factors have had to be considered by the procuring agency and any decision taken calls for showing deference. There is no cavil that picking a form of security is a policy decision, which exercise of discretion is not amenable to constitutional jurisdiction, otherwise. Be that as it may, provisioning of security from Insurance companies is not permissible anymore. Question requiring consideration is whether act of limiting choice of security conflicts with prevalent procurement regime. No particular clause is referred to show any conflict or violation for limiting choice of acceptability of a specific kind of security. Judgments in cases of Constructors Association of Pakistan through Secretary General and 4 others and M/s Saad Ullah Khan & brothers had no application in the context of procurement regime, operative in the Province of Punjab. Under the present procurement regime, an Authority has been constituted through section 3 of the Punjab Procurement Regulatory Authority Act, 2009, which Authority is entrusted with the functions of preparing standard document to be used in connection with public procurement - [Section 5-(h)]. Authority, in exercise of powers under section 29 of the Act, 2009 and Rule 25(5) of Rules, 2014 framed Standard Bidding Documents for Procurement of Civil Works, wherein acceptable security was identified in shape of Bank guarantee/ CDR/ Demand Draft, etc. and not the securities from the Insurance Companies. Accordingly, changes were made in standard contract form.

iii) Argument that instructions of ECNEC for extending preference to standard bidding documents drafted by PEC is biding and claim superiority vis-à-vis the prevalent procurement regime is misconceived. Instructions, though notified, does not restrict or impede the enforcement of public procurement regime envisaged under the auspicious of Act, 2009 and Rules, 2014. Instructions, having advisory status cannot be construed to undermine the provincial autonomy and effective enforcement of procurement regime in Punjab. No jurisdictional objection is pleaded qua the powers of the Authority to draft sample bidding documents and

tasks assigned to the procuring agency. Government of Punjab had introduced contract form for the guidance of the bidders and for regulating procurement matters. Violation recorded of any provision of the Act, 2009, Rules, 2014, regulations, orders or instructions made there-under, attracts mis-procurement. Notably, no facial challenge has been thrown qua the constitutionality of Act, 2009 and Rules, 2014 – no issue of legislative competence of the Province of Punjab to legislate is raised. And as-applied challenge to the application of various provisions of Act, 2009 and Rules, 2014 also fails. The instructions of ECNEC cannot be elevated to the standard of a legislative enactment for the purposes of conferring preferability under Article 143 of the Constitution. Scope of Article 143 of the Constitution has been misconstrued in the judgments referred. Petitioners‟ side failed to refer any entry in the Federal Legislative Schedule to disqualify the provinces from legislating on the subject of procurement matters. There is another aspect regarding applicability of standard bidding documents framed by PEC. Regulation 3 of the Public Procurement Regulations, 2008 – framed in exercise of powers under section 27 of the Public Procurement Regulatory Authority Ordinance, 2002 – directs the procuring agency to use standard form of bidding documents prescribed by PEC. Regulation 3, ibid, has no relevance and applicability in the context of Act, 2009 or the Rules, 2014, wherein no provision parallel to Regulation 3 is pointed. There is nothing in the Act or the Rules that circumvents the power of the Government, Authority and procuring agency to frame policy guidelines, issue instructions and orders for making procurement efficient, economical and transparent. The judgments referred are not attracted in the context of provisions of Act of 2009 and Rules of 2014.

Conclusion: i) The procuring agency can demand additional performance security, in addition to the requirement of performance guarantee.

ii) Discretion or option of the bidder to pick security of its choice and convenience is not permitted under Punjab Procurement Regulatory Authority Act, 2009 and Punjab Procurement Rules, 2014.

iii) Punjab Government, Authority and procuring agency can frame policy guidelines, issue instructions and orders for making procurement efficient, economical and transparent.

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32. **Lahore High Court**
Syed Ali Raza Rizvi and 33 others v. Commissioner, D.G. Khan and 10 others.
W.P. No. 1355/2024
Ms. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2024LHC1042.pdf

Facts: This and connected Constitutional petitions assails land acquisition process, initiated pursuant to the decision of Federal Government for the development of

600 - Megawatt Peak Capacity Soler PV Project, in District Kot Addu / Muzaffargarh, Punjab.

Issue: What would be effect of exercising judicial review jurisdiction when once land is acquired for public purpose?

Analysis: No significant procedural defect, misuse or abdication of authority and illegality in exercise of powers is established – no question of violation of section 230 of the Act 2017 arises when Notification under section 4 and Notification under section 17(4) of the Act, 1894 were issued before assumption of control by Caretaker Government at Federal level. Land is acquired for the Company, which is tasked to undertake a project having benefits and advantages for the public… Once land is required for public purpose, interference by exercising judicial review jurisdiction tantamount to throw spanner in the works…

Conclusion: Once land is acquired for public purpose, interference by exercising judicial review jurisdiction tantamount to throw spanner in the works.

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33. **Lahore High Court**
Syed Faheem ul Hassan v. I.G. Punjab Police, etc.
W.P. No.1075 of 2024
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC1111.pdf

Facts: This petition was filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 for the recovery of brother of the petitioner allegedly from illegal confinement of respondents No.4 & 5 serving at Organized Crime Unit Civil Line Division Lahore, with consequent relief of legal action against the said respondents.

Issues: i) Whether, once an accused is lodged in judicial custody, his further physical remand in that case or some other FIR(s) can be granted?
ii) Whether physical remand of an accused can be granted when he directly surrenders before the Magistrate in response to a warrant and has been sent to judicial custody?
iii) Whether an accused is deemed to have been arrested in all cases within the knowledge of the investigating agency?

Analysis: i) Out of referred Judgments, some speak that though there exist no provision in Cr.P.C. which could authorize subsequent physical remand in the same case once accused is lodged to judicial custody but concerned Magistrate can grant physical remand of such accused in different FIRs if there exist exceptional and convincing circumstances. The logic behind such decision is being highlighted while referring relevant case laws… On the basis of similar provisions of Cr.P.C., a Division Bench Judgment of RAJASTHAN HIGH COURT from Indian Jurisdiction is also available in support of successive remands which was reported

as “State Versus Sukhsingh and others” [1954 AIR (Raj) 290: 1955 RLW 46: 1954 CriLJ 79: 1955 RLW 46: 1954(4) ILR (Rajasthan) 413]. It questions that whether where an accused is kept in jail by orders of adjournment or remand under Section 344 of Cr.P.C, can he be handed over to the police in some other case for purposes of investigation. In view of the powers of the Magistrate under Section 167(2), the Court saw no prohibition in the Criminal Procedure Code against such a course… Even as per Rule-6 (1) (b) of Part-B, Chapter-11 of High Court Rules & Orders, Volume-III, Magistrate can remand the accused to Police custody (if empowered to do so) or to magisterial custody as he may think fit, for a term not exceeding 15 days, which term if less than 15 days, may subsequently be extended up to the limit of 15 days in all, but it does not mean that if before exhausting 15 days’ physical remand accused is lodged to judicial custody, police can retake his physical custody in the same case to claim remaining period out of 15 days. In Rule-10 of same Chapter of High Court Rules & Orders as cited above, it is mentioned that if the limit of 15 days has elapsed, and there is still need for further investigation by the Police, the procedure to be adopted is laid down in section 344, Criminal Procedure Code. The case is brought on to the Magistrate's file and the accused, if detention is necessary, will remain in magisterial custody. The case may be postponed or adjourned from time to time for periods of not more than 15 days each, and as each adjournment expires the accused must be produced before the Magistrate, and the order of adjournment must show good reasons for making the order. Same procedure is highlighted in APPENDIX No. 25.56(1) of Police Rules, 1934… if he has been lodged to judicial custody in a case, his subsequent physical remand can be obtained by the police in other FIRs registered at different police stations or districts or province with the permission of concerned Magistrate/Court.

ii) As per facts of a case reported as “STATE versus FATEH MOHAMMAD” (1972 S C M R 182), in response to a warrant of arrest issued by the Magistrate, the offender directly surrendered before him who lodged the accused to judicial custody; later police sought physical remand of accused which was granted. Such order of Magistrate was overturned by the High Court but Supreme Court of Pakistan held that the Magistrate was legally competent to do… On information about presence of accused in judicial custody in a case in another district or province, Police can follow the procedure laid down in Rule 26.20 of Police Rules, 1934 for subsequent remand…

iii) In the celebrated judgment of this Court reported as “Mst. Razia Pervaiz and another versus The Senior Superintendent of Police, Multan and 5 others” (1992 P Cr. L J 131), it was declared that an accused required in more than one criminal cases when arrested will be deemed to have been arrested in all the cases registered against him, and warned that law does not authorize the police to arrest an accused required in more than one cases, in one case and to wait for his arrest in the other case till the expiry of the period of remand under Section 167, Cr.P.C. or till he is released on bail in the first case, and this Court, therefore, held in a case reported as “PARVEZ ELAHI versus CARE TAKER GOVERNMENT OF

PUNJAB etc." (PLJ 2024 Lahore 43)… In Indian jurisdiction, ANDHRA PRADESH HIGH COURT while dealing with a case reported as "M/s. Jagathi Publications Ltd., rep., by Y. Eshwara Prasad Reddy Versus Central Bureau of Investigation, Hyderabad" [2012(2) ALT (Crl.) 285 : 2013 CriLJ 118 : 2013(2) CCR 98 : 2014(10) R.C.R.(Criminal) 84 : 2012(2) Andh LD (Criminal) 762] directed the authorities that "All political parties should have equal opportunities to participate in election campaigns and propaganda and no one should be unnecessarily arrested and harassed, except, wherein, his arrest is bona fidely required for the purpose of investigation"… On the strength of above judgments and legal provisions, it can safely be held that when an accused is arrested in a case, his arrest must be shown in all cases registered against him so far within the knowledge of investigating agency…

Conclusion: i) There is no provision in Cr.P.C. which authorize subsequent physical remand in the same case once the accused is lodged in judicial custody, but the concerned Magistrate can grant physical remand to such accused in different FIRs if there are exceptional and convincing circumstances.
ii) Physical remand of an accused can be granted when he directly surrenders before the magistrate in response to a warrant and has been sent to judicial custody.
iii) When an accused is arrested in a case, his arrest must be shown in all cases registered against him so far within the knowledge of investigating agency.

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34. **Lahore High Court**
Malik Muhammad Ashraf v. Muhammad Asif, etc.
R.F.A. No.258 of 2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC998.pdf

Facts: This regular first appeal is filed against consolidated judgment and decree through which the suit for recovery on the basis of cheque, under order XXXVII Rules 1 and 2 of the Code of Civil Procedure, 1908 instituted by respondent No.1was decreed and the suit instituted by the appellant, for cancellation of the said cheque was dismissed.

Issues: i) Whether standard of evidence to prove a civil case is different from the evidence required to convict an accused in a criminal case?
ii) Whether the statement of a witness must be consistent with the circumstances of the case before the same is believed and relied upon?

Analysis: i) There is no doubt that standard of evidence to prove a civil case is different from the evidence required to convict an accused in a criminal case. In civil cases, it is preponderance of evidence on the basis of which a dispute is to be decided, however, it does not mean that the conclusion in civil cases based on same set of facts is drawn mechanically, ignoring the crucial piece of evidence available on record such as statement of the plaintiff during the criminal trial, having direct

nexus with the dispute.

ii) It is settled principle of appraising evidence that the statement of a witness must be consistent with the circumstances of the case before the same is believed and relied upon. The preceding discussion makes it amply clear that as on 05.12.2016 there was only one transaction, entered into between the appellant and Manager of the respondent, in respect of which the respondent claims that the impugned cheque was issued, however, the respondent side could not refute that the payment in respect of the said transaction was cleared through voucher dated 05.12.2016, which propels to conclude that the impugned cheque was lying with the respondent side as guarantee on account of the admitted business relationship of purchase of wheat to secure any balance due and despite receiving payment in respect of the disputed transaction, the impugned cheque has been misused.

Conclusion: i) Standard of evidence to prove a civil case is different from the evidence required to convict an accused in a criminal case.

ii) The statement of a witness must be consistent with the circumstances of the case before the same is believed and relied upon.

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35. **Lahore High Court**
Sultan Mehmood Rana v. Naeem Ahmad, etc.
Civil Revision No.931-D of 2018
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC989.pdf

Facts: Revision has been filed impugning the judgments of the Courts below which are at variance pertaining to making the award rendered by the Arbitrator as Rule of the Court.

Issues: (i) Whether the limitation period envisaged under Article 178 of the Act 1908, for filing an application to make the award a Rule of the Court commences from the date of issuance of formal notice in writing by the Arbitrator(s) to the parties or the general knowledge of the parties about making and signing of the award?

(ii) What is the obligation of the court regarding the limitation in case of award when it is before the court?

Analysis: (i) Article 178 of the Act 1908 clearly depicts that the limitation starts from "the date of service of the notice of the making of the award". Section 14(1) of the Act 1940 makes it clear that the Arbitrators after making and signing of the award have to give a notice, in writing, of the making and signing of the award to the parties. The requirement of a notice in writing is important as the service of notice is the point from which the limitation for making an application to the Court for filing the award commences per Article 178 of Act 1908. This Section is to be also read with Section 42 of the Act 1940, which provides that any notice that is required to be served by an Arbitrator shall be served in the manner provided in the arbitration agreement or if there is no such provision then by delivering it to the person on whom it is to be served or by sending it by post at the usual address

of such person. There is no room of implied notice under the law in respect of making and signing of the award. The above quoted provisions of law have technical meanings and can only be construed as requiring of issuance of a separate notice in writing by the Arbitrator(s) notwithstanding the fact that a party has knowledge of the passing of the award through receipt of any instrument (cheque in the instant case) handed over to him for satisfaction of amount awarded by the Arbitrator(s). A question also arises as to how the limitation is to be governed, if no notice is given by the Arbitrator(s) to the party. This Court is of the opinion that in such eventuality it is Article 181 of the Act 1908, which is residuary clause that will be applicable and the same contemplates a period of three years.

(ii) It is pertinent to mention that once an award is before the Court, either through the Arbitrator(s) or any party then in terms of Section 17 of the Act 1940, it is the duty of Court to examine the same and see whether it suffers from any patent illegality or if there is any cause to remit the award to the Arbitrator(s) irrespective of the fact that opposite party has not approached the Court within time. Once the award is before the Court, it is the duty of the Court to scrutinize the award, which is independent of the fact whether any side has objected to the same or not or the application of one of the parties to arbitration proceedings is time barred**.**

Conclusion: (i) The requirement of a notice in writing is important as the service of notice is the point from which the limitation for making an application to the Court for filing the award commences per Article 178 of Act 1908. This Section is to be also read with Section 42 of the Act 1940. There is no room of implied notice under the law in respect of making and signing of the award. If no notice is given by the Arbitrator(s) to the party in such eventuality Article 181 of the Act 1908 will be applicable.

(ii) It is the duty of Court to examine the award and see whether it suffers from any patent illegality or if there is any cause to remit the award to the Arbitrator(s) irrespective of the fact that opposite party has not approached the Court within time.

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36. **Lahore High Court**
Muhammad Iftikhar v. Government of Punjab, etc.
Writ Petition No.9661 of 2009
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC1004.pdf

Facts: Through this Writ Petition along with connected petition the petitioners have challenged the vires of sub-rule (3) of Rule 13 of the Punjab Local Government (Auctioning of Collection Rights) Rules, 2003 for being in violation of Section 142 of the Punjab Local Government Ordinance, 2001.

Issues: i) What are the rules and procedure of auctioning of the collection rights of

various fees and/or taxes of the Local Government?

ii) What is the object behind deposit of earnest/security money in order to participate in the public auction?

iii) Whether law does envisage that a separate notice of consequence of failure to deposit the amount is required to be given in a bid?

iv) What is the purpose of sub-rule (3) of the Rule 13 of the Punjab Local Government (Auctioning of Collection Rights) Rules, 2003?

v) Which date of issuance of the notice will be presumed to be its date of receipt in the absence of any date of receipt?

vi) Whether High court in exercise of constitutional jurisdiction can venture in to factual controversy, which require recording of evidence and whether liquidated damages if settled in the contract are required to be proved?

vii) What is the definition of the term "deposits"?

viii) Whether the forfeiture of deposits envisaged in sub-rule (3) of Rule 13 relates to pre-contracts stage and the forfeiture of additional deposit was to be regulated by the provisions of a contract, which constituted between the parties after first deposit?

ix) Whether an uncertain term of the contract can be enforced under the law?

Analysis: i) A Local Government under Rule 3 may collect income through contractor(s) by awarding contract(s) of collection rights. Rule 5 lays down the auction procedure by providing that the public notice for the conduct of auction shall be given through two national daily newspapers, which shall, inter alia, include the minimum reserve price, period of contract with rates and details. Sub-rule (3) of Rule 11 empowers the Council to accept or reject the bid by setting out the reasons for rejection. Rule 13 provides that as soon as the confirmation of offer of the bid is received from the Council, the same shall be intimated through special messenger to the contractor with the direction to the contractor to enter into written agreement and fulfil his obligations in accordance with the terms and conditions of the contract within stipulated time and the failure of the contractor to deposit the dues recoverable from him and/or does not enter into written agreement would raise adverse presumption that the contractor is no more interested in the contract. Sub-rule (3) of Rule 13 further states that in such an eventuality, the offer shall automatically stand cancelled and the deposits made by the contractor shall stand forfeited. The income shall also be put to re-auction...

ii) The deposit of earnest/security money in order to participate in the public auction, purposively speaking, ensures that serious contenders participate in the process of auction. However, if a contractor participates in the auction process and subsequently retracts from it after confirmation of the bid by the Council, it would constrain the Local Government to re-auction involving not only the time and resources of the Local Government but also loss of time and finance in the collection of fees. Therefore, the forfeiture of earnest/security money of such a contractor ensures that serious contender(s) participates in the process of auction and if someone fails to deposit the outstanding/balance amount of the bid, the

earnest/security amount stands forfeited in favour of the Local Government… The object of such forfeiture has been spelled out in sub-rule (3) of the Rules by the legislature by contemplating that "The income shall also be put to re-auction in such a case"… bare reading of Rule 13 makes it clear that the legislature has made a correlation between the earnest/security money and the object of forfeiture, which is to meet the cost of reauction on account of failure of the successful bidder to deposit the balance amount and/or non-adherence to terms and conditions.

iii) The law does not envisage that a separate notice of consequence of failure to deposit the amount is required to be given. The only thing that is required to be ascertained is whether the notice was given and received by the successful bidder and within time stipulated therein the requisite amount was not deposited.

iv) Sub-rule (3) of Rule 13 of the Rule 13 of the Punjab Local Government (Auctioning of Collection Rights) Rules, 2003 merely provides the consequences of non-adherence to the terms and conditions of the bid (...)

v) In the absence of any date of receipt, the date of issuance of the notice will be presumed to be its date of receipt as the same was to be communicated immediately through special messenger in terms of sub-rule (1) of Rule 13 (…)

vi) It is settled law that this Court, in exercise of its constitutional jurisdiction, cannot venture into such factual controversy which requires recording of evidence. It is worth observing that Section 74 of the Contract Act, 1872 also provides that where the liquidated damages are settled in the contract, the party aggrieved of the breach of contract is not bound to prove the same…

vii) Though the term "deposits" has been used to be forfeited in terms of sub-rule (3) of Rule 13, it is settled principle of interpretation that the words have no constant meanings rather they imbibe colour from their context. Therefore, the term "deposits" is required to be construed in the context in which it has been used in Rule 13, which deals with the intimation of acceptance of the bid requiring the contractor/successful bidder to enter into formal contract.

viii) Once the first deposit was made, the contract came into existence between the parties and the forfeiture of additional deposit was to be regulated by the provisions of said contract executed between the parties and not the terms of the auction… The forfeiture of deposits envisaged in sub-rule (3) of Rule 13 relates to pre-contracts stage as the relations between the respondent and the petitioner were to be regulated by the terms and conditions of the auction whereas the relations between the parties transform into contractual relations subsequent to the execution of the contract. Therefore, while the forfeiture of the earnest/security amount deposited prior to holding of auction is justifiable in terms of sub-rule (3) of Rule 13, however, Any contractual violation subsequent to the execution of the contract is to be resolved as per the mechanism provided under the contract (including arbitration clause) and not by the terms of the auction.

ix) An uncertain term of the contract cannot be enforced under the law.

Conclusion: i) See above in analysis portion.

ii) See above in analysis portion.
iii) Law does not envisage that a separate notice of consequence of failure to deposit the amount is required to be given in a bid.
iv) The purpose of sub-rule (3) of the Rule 13 of the Punjab Local Government (Auctioning of Collection Rights) Rules, 2003 is merely provides the consequences of non-adherence to the terms and conditions of the bid.
v) In the absence of any date of receipt, the date of issuance of the notice will be presumed to be its date of receipt.
vi) High court in exercise of constitutional jurisdiction cannot venture in to factual controversy, which require recording of evidence and liquidated damages if settled in the contract are required to be proved by the party aggrieved of the breach of such contract.
vii) See above in analysis portion.
viii) Yes, the forfeiture of deposits envisaged in sub-rule (3) of Rule 13 relates to pre-contracts stage and the forfeiture of additional deposit was to be regulated by the provisions contract, which constituted between the parties after first deposit.
ix) An uncertain term of the contract cannot be enforced under the law.

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37. **Lahore High Court**
Sheikh Khalid Javaid v. Shamas ud Din Chishti
Civil Revision No.323/2022
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC1015.pdf

Facts: This civil revision is directed against the judgment and decree whereby the appeal of the respondent was accepted, order and decree passed by the Trial Court was set aside and the suit of the respondent instituted for specific performance of the contract, based on an agreement to sell, was decreed. An application was also filed by one applicant who purchased the suit property from the petitioner, when the suit of the respondent was dismissed and the appeal was not preferred, however, the limitation period for preferring appeal was yet to expire. Through this judgment, the said application is also decided.

Issues: i) What are the key factors to be kept in sight while determining the willingness and readiness of a plaintiff in a suit for specific performance of the contract?
ii) Whether an offer made by a party (the defendant) before the Trial Court to decree the suit for specific performance of the contract, which was not accepted by the other party (the plaintiff) remains valid at the appellate stage?

Analysis: i) Equity mandates that in a suit for specific performance, it is the duty of the Court to find out, which party has not performed and is trying to wriggle out of his contractual obligations. In exercise of such discretion, the Court may consider the conduct of the parties which becomes relevant in granting and/or refusing decree for specific performance being discretionary and based on principles of equity. In cases involving specific performance, the primary part of the contract is the consideration to be paid by the vendee for which he must exhibit his

willingness and readiness, at all times. In this regard, he must unconditionally seek permission of the Court, on the first date of hearing, to deposit the remaining sale consideration…While willingness and readiness of a plaintiff in a suit for specific performance of the contract is crucial and relevant, there are certain aspects which may be relevant viz-a-viz the conduct of the plaintiff/vendee entitling and/or disentitling him from the decree for specific performance…However, the vendee, as part of natural human conduct, is expected to immediately file a suit for specific performance of contract on refusal of the vendor to adhere to his contractual obligations which would exhibit that the vendee is willing and ready to perform his part of the contract in terms of deposit of the balance consideration. Any delay in this regard may indicate his intention that the plaintiff/vendee himself is not ready and willing to perform his part of the contract and the Court may refuse to grant specific performance on account of such conduct….this Court is of the opinion that the respondent entered into the agreement with the petitioner and thereafter, entangled the latter into litigation and avoided the payment of the balance consideration amount on one pretext or the other, which propels to opine that the respondent was neither willing nor ready to pay the balance amount of consideration and the Appellate Court below was not justified in relying on the admission of execution of the agreement by the petitioner before the Trial Court to decree the suit of the respondent. …. Suffice to observe that the performance of the contract is not to be seen from the date when it is suitable to the plaintiff. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the Court must take into consideration the conduct of the plaintiff prior as well as subsequent to the institution of the suit alongwith other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available.

ii) This Court is of the opinion that in peculiar facts and circumstances of the case, a conditional offer made by a party (the defendant) before the Trial Court to decree the suit for specific performance of the contract, which was not accepted by the other party (the plaintiff) does not remain valid at the appellate stage.

Conclusion: i) The key factors to determine willingness and readiness of plaintiff in a suit for specific performance of a contract are that;

- The plaintiff (or vendee) must demonstrate their readiness and willingness to perform their part of the contract. This involves unconditionally seeking permission from the Court, on the first date of hearing, to deposit the remaining sale consideration.
- The plaintiff is expected to promptly file a suit for specific performance if the vendor refuses to adhere to their contractual obligations. Any delay in initiating legal action may indicate a lack of readiness and willingness on the part of the plaintiff.
- Entangling the other party in un-necessary litigation to avoid payment of remaining sale consideration.
- Conduct of the plaintiff prior as well as subsequent to the institution of the suit alongwith other attending circumstances.

- The amount of consideration which he has to pay to the defendant must of necessity be proved to be available.

ii) A conditional offer made by a party (the defendant) before the Trial Court to decree the suit for specific performance of the contract, which was not accepted by the other party (the plaintiff) does not remain valid at the appellate stage.

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38. **Lahore High Court**
Muhammad Ramzan etc. v. Haleema Bibi etc.
Civil Revision No.346/2018
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC1139.pdf

Facts: Suit for declaration was filed in respect of the disputed property, against the respondents, on the basis of registered sale deed in which Issues were framed and after recording evidence of the parties pro and contra, the suit of the petitioners was dismissed by the Trial Court, which was subsequently upheld by the Additional District Judge. Hence, this revision petition.

Issues: i) Whether the Courts below were justified in giving preference to prior unregistered document over a subsequent registered document pertaining to the same immovable property?
ii) Whether civil cases are to be decided on preponderance of evidence by reading the evidence as a whole rather cherry-picking certain aspects of the pleadings and/or evidence?
iii) What is the scope and extent of revisional powers of a High Court?

Analysis: i) Sub-section (1) of Section 50 of the Act 1908 lays down general principle that a registered document, even if falling under Section 18, regarding the immovable property shall take effect as regards the property therein against every unregistered document relating to the same property irrespective of the nature of the unregistered document. (…) First proviso to Section 50(1) creates an exception by providing that where the person is in possession of the property under an unregistered document, prior in time, he would be entitled to the protection under Section 53-A of the Act 1882 provided further if the conditions of Section 53-A are fulfilled. (…) Therefore, in peculiar facts and circumstances of the case, this Court is of the view that an unregistered document even if prior in time cannot be given preference to registered document more particularly when the latter document is holding the field and no challenge has been laid to the same by the respondents.
ii) The contradictions in the pleadings and the evidence reproduced above in the ordinary course might have been highly detrimental to the case of the petitioners, however, it is settled proposition of law that civil cases are to be decided on preponderance of evidence by reading the evidence as a whole rather cherry-picking certain aspects of the pleadings and/or evidence. This helps in achieving a predictable standard pattern in reaching a just decision. (…) At this juncture, it is

imperative to observe that neither the pleadings can be treated as evidence nor documentary evidence can be brushed aside on account of the weak oral testimony of the plaintiffs, more particularly, when the case is that of inheritance and based on a registered document, which is more than 58 years old and holding the field.

iii) The scope of the revisional powers of the High Court though circumscribed by conditions of excess of jurisdiction, failure to exercise jurisdiction, illegal exercise of jurisdiction, is nevertheless very vast and corresponds to a remedy of certiorari and in fact goes beyond that at least in two respects inasmuch as: Firstly, its discretionary jurisdiction may be invoked by the Court suo motu, and Secondly, the Court "may make such order in the case as it thinks fit. (…) Thus, it is obvious that while the revisional powers may be circumscribed and cordoned off by conditions of excess of jurisdiction, failure to exercise jurisdiction, illegal exercise of jurisdiction, it is very vast being in the nature of certiorari and rather travels beyond the same. (…) High Court in exercise of its revisional and visitorial jurisdiction can undertake the exercise of analysis of the evidence for the first time regarding a piece of evidence not analysed and/or overlooked by the Courts below.

Conclusions: i) An unregistered document even if prior in time cannot be given preference to registered document more particularly when the latter document is holding the field and no challenge has been laid to the same.

ii) Civil cases are to be decided on preponderance of evidence by reading the evidence as a whole rather cherry-picking certain aspects of the pleadings and/or evidence. Neither the pleadings can be treated as evidence nor documentary evidence can be brushed aside on account of the weak oral testimony of the plaintiffs.

iii) See the above analysis clause no.iii

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39. **Lahore High Court**
Muhammad Imran v. Inspector General of Police, etc.
W.P. No. 8709/2024
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2024LHC1065.pdf

Facts: Through the instant constitutional petition the petitioner sought recovery of the detenu, his real brother, who was allegedly in illegal detention of respondents No. 2 and 3, i.e. Station House Officers.

Issues: i) Whether scope of Article 10-A of the Constitution of Pakistan is merely confined to the courtroom?

ii) Why it is necessary to report the arrest?

iii) What is the purpose of legal requirement of producing accused before magistrate when investigation cannot be completed in 24 hours as per section 167 Cr.P.C?

iv) What is the significance of supervisory role of magistrate in investigation process of a criminal case?
v) For what purpose a Magistrate's role in remand proceedings is critical?
vi) Why speaking order in judicial proceedings is essential?
vii) What is crucial responsibility of magistrate while dealing with the question of sending an accused to prison for identification parade?
viii) What is the rationale behind principle of producing accused before the Magistrate within official court hours and whether such request of remand can be dealt with at any other place than the open court room?
ix) What are the fundamental rights of an individual arrested and investigated by the police?

Analysis: i) The insertion of Article 10-A within the constitutional framework heralds a pivotal extension of the right to a fair trial and due process, not merely confining its scope to the courtroom but expansively integrating it into the pretrial proceedings, including the investigation phase. This provision, illustrative of the jurisprudential evolution towards safeguarding individual liberties, mandates that the fundamental rights of an accused are zealously guarded from the moment of accusation through to the final adjudication.
ii) The legal framework mandates that police authorities must report arrests and detentions to higher authorities promptly under Section 62 of the Code. This requirement serves as a critical check against arbitrary detention, ensuring that each case is subject to oversight and that the rights of the arrestees are protected. The necessity to report arrest/detention helps to prevent abuse of power, ensuring that the detention of individuals is always justified, documented, and subject to legal scrutiny.
iii) Section 167 of the Code further addresses the situation where the investigation cannot be completed within twenty-four hours, granting the investigating officer the authority to seek an extension of the detention period. This provision of law lays down the procedure for such an extension to be granted by the Magistrate. The provision that mandates the transfer of custody of an accused to a Magistrate within twenty-four hours of arrest is a significant safeguard designed to minimize the risk of illegal detention by the police. This legal requirement ensures a critical layer of judicial control, preventing the prolonged, unauthorized holding of accused without formal charges or legal justification. By involving the judiciary at this early stage, it reinforces the principle that detention must always be subject to legal review and approval.
iv) The Area Magistrate acts as a pivotal character in our criminal justice system, therefore, his supervisory role ensures that police investigations adhere to the principles of justice, transparency, and fairness, which are fundamental to maintaining public trust in the criminal justice system. He plays a crucial role in safeguarding the rights of the accused and the complainant, ensuring that investigating agencies do not infringe upon fundamental rights and investigations are conducted in a manner that upholds lawfulness. This involves ensuring that investigations are conducted fairly, transparently, and within the legal framework.

v) It requires a thorough and thoughtful examination of all aspects of the case to ensure that any decision to grant remand is justified, lawful, and in accordance with settled principles governing the subject. A perfunctory approach, in contrast, implies a superficial or automatic decision-making process that neglects the careful consideration required in such matters. Such an approach might lead to unjust outcomes, including the unwarranted deprivation of liberty, the potential for abuse in custody, and the undermining of the public trust in the legal system. Therefore, a Magistrate's role in remand proceedings is critical in safeguarding against arbitrary detention and ensuring that the rights of the accused are protected. By acting judiciously and an open-minded assessment of the evidence and legal arguments, Magistrates uphold the principles of justice and fairness that are foundational to any criminal justice system.

vi) A speaking order in judicial proceedings is essential and refers to a judgment or decision delivered by a court that comprehensively outlines the reasons behind the court's conclusions. Speaking orders provide a clear and detailed explanation of the reasoning behind a decision. An order being a 'speaking one' is also essential for the parties involved in the case to understand the basis of the findings of the court. This is also crucial if a party wishes to challenge the decision, as it provides a clear framework for the grounds of appeal. Without a reasoned judgment, it would be difficult to identify any potential errors in law or fact to challenge the same.

vii) Moreover, while dealing with the question of sending an accused to prison for TIP, a Magistrate has a crucial responsibility to thoroughly review the case diaries to determine the necessity of acceding to the request of the investigating agency. This process is not a mere formality, but a substantive judicial duty aimed at safeguarding the rights of the accused while balancing the requirements of the investigation.

viii) The practice of presenting the accused before a Magistrate outside of regular court hours has been deprecated by the Courts. The principle here is that the accused should be produced before the Magistrate within official court hours to ensure the proceedings are conducted transparently and within the formal legal framework. Presenting an accused after court hours could necessitate conducting these proceedings at the Magistrate's residence or another unofficial location, a practice that constitutional Courts have explicitly criticized for lacking transparency and formal procedural safeguards. The request of the investigating agency regarding remand should be entertained in open court during court hours unless there are extraordinary compelling reasons and circumstances for doing so in any other place than the open courtroom.

ix) Before drawing the curtain on this judgment, it would be prudent to outline the fundamental rights of an individual arrested and investigated by the police.

I. Upon apprehension and during subsequent detention, it is incumbent upon the detaining authority to promptly apprise the accused of the grounds for such arrest, in accordance with the principles of due process and legal transparency. Communicating the grounds for arrest and the details of accusations allows the

accused to understand the allegations he is facing and offer an adequate defense. Such practice ensures that arrests are not made without sufficient cause or used as a tool of oppression, thereby safeguarding the liberty of citizens and the rule of law.

II. An accused should be allowed to contact his family after his arrest. The ability to communicate with family ensures that the accused can alert others about his situation, potentially mobilizing support and advocacy on his behalf. This can be crucial for safeguarding their rights, especially in jurisdictions or situations where the risk of violation of the law is high. In essence, the right of an accused to contact his family immediately after arrest is a crucial safeguard against arbitrary and illegal arrest.

III. An accused has an undeniable right to have legal advice instantly after his arrest. Police authorities have a crucial obligation to facilitate an accused to contact his lawyer following arrest. This duty is rooted in the principles of due process and the right to a fair trial, as recognized by Articles 10 and 10-A of the Constitution. Providing an accused individual with access to legal representation is a cornerstone of a fair, just, and humane legal system. This access is not merely a procedural right but a foundational element that ensures the integrity of the criminal justice system.

IV. The arrest report concerning an accused must be dispatched following Section 62 of the Code, together with Rule 26.8 of the Police Rules, to avoid instances of illegal detention. If the investigation extends beyond twenty-four hours, it is mandatory to bring the accused before a Magistrate to seek authorization for any further extension of custody under Section 167 of the Code.

V. Upon the presentation of an arrested individual before the concerned Magistrate, it becomes the Magistrate's solemn duty to safeguard the accused's fundamental rights, a custodianship that forms the foundation of judicial integrity and fairness. In our criminal justice system, the role of the Magistrate is both significant and pivotal.

VI. An accused must not be subjected to torture to elicit evidence or confession as prohibited under Article 14 of the Constitution, which advocates for fairness, equality, and dignity in the treatment of an accused. Ensuring compliance with this provision safeguards the accused from inhumane treatment and upholds the fundamental principles of justice and human dignity.

VII. The safeguarding of the aforecited rights of an accused in custody must not only be ensured by the police officials but also be properly documented in the police record to reflect such efforts.

Conclusion: i) The right to a fair trial and due process under article 10-A of the Constitution, not merely confining its scope to the courtroom but expansively integrating it into the pretrial proceedings, including the investigation phase.

ii) The necessity to report arrest/detention helps to prevent abuse of power, ensuring that the detention of individuals is always justified, documented, and subject to legal scrutiny.

iii) This legal requirement ensures a critical layer of judicial control, preventing the prolonged, unauthorized holding of accused without formal charges or legal justification.
iv) See above in analysis portion.
v) Magistrate's role in remand proceedings is critical in safeguarding against arbitrary detention and ensuring that the rights of the accused are protected. By acting judiciously and an open-minded assessment of the evidence and legal arguments, Magistrates uphold the principles of justice and fairness that are foundational to any criminal justice system.
vi) See analysis portion.
vii) While dealing with the question of sending an accused to prison for identification parade, a Magistrate has a crucial responsibility to thoroughly review the case diaries to determine the necessity of acceding to the request of the investigating agency.
viii) The principle here is that the accused should be produced before the Magistrate within official court hours to ensure the proceedings are conducted transparently and within the formal legal framework. The request of the investigating agency regarding remand should be entertained in open court during court hours unless there are extraordinary compelling reasons and circumstances for doing so in any other place than the open courtroom.
ix) See analysis portion.

LATEST LEGISLATION / AMENDMENTS

1. Vide Notification No.28 of 2024 dated 29.02.2024 published in the official Punjab Gazette, the Governor of the Punjab has made "The Punjab Environmental Protection and Climate Change Department (Environment Monitoring Center) Employees Service Rules, 2024".
2. Vide Notification No.29 of 2024 dated 29.02.2024 published in the official Punjab Gazette, the Governor of the Punjab has made "The Punjab Environmental Protection and Climate Change Department (Environment Policy Center) Employees Service Rules, 2024".
3. Amendments in "The Punjab Environment Protection Department Service Rules,1997" vide Notification No. SOR-III(S&GAD)1-24/2007(P-II) published in the official Punjab Gazette through Notification No.30 of 2024 dated 29.02.2024.
4. Vide Notification No. SO(REV)IRR/12-70/23(AII CEs)-992/507 dated 28-02-2024 published in the official Punjab Gazette, through Notification No.31 of 2024 dated 04.03.2024 the Secretary, Government of the Punjab, Irrigation Department has Delegated his powers under section 154(5)(a) & (b) of the Punjab Irrigation, Drainage and Rivers Act 2023, to the Chief Engineer of the concerned Irrigation Zone.

5. Vide Notification No.32 of 2024 dated 08.03.2024 published in the official Punjab Gazette, the Governor of the Punjab has published Draft of Rules under the title of "The Punjab Motor Vehicle Rules,1969 (Draft Rules)" following public notice seeking objections and suggestions.
6. Vide Notification No. SO(REV)IRR/12-70/23(AII CEs)-992 dated 21-12-2023 published in the official Punjab Gazette, through Notification No.33 of 2024 dated 13.03.2024 the Secretary, Government of the Punjab, Irrigation Department has Delegated his powers under section 53(4) of the Punjab Irrigation, Drainage and Rivers Act 2023, to the Chief Engineer of the concerned Irrigation Zone.
7. Amendment in "The Punjab Specialized Healthcare and Medical Education Department (Medical and Dental Teaching Posts Service Rules 1979" in the 2nd Schedule vide Notification No. SOR-III(S&GAD)1-9/2016(P-III) dated 11-03-2024 published in the official Punjab Gazette through Notification No.34 of 2024 dated 13.03.2024.
8. Amendments in "The Punjab Specialized Healthcare and Medical Education Department (Medical and Dental Teaching Posts Service Rules, 1979" in the 2nd Schedule vide Notification No. SOR-III(S&GAD)1-9/2016(P-III) dated 11-03-2024 published in the official Punjab Gazette through Notification No.35 of 2024 dated 13.03.2024.
9. Vide Order No. SOP(WL)12-2/2007(A)(PF) dated 21-09-2023 published in the official Punjab Gazette through Notification No.36 of 2024 dated 21.032024, "The Community Based Conservancy zones" are hereby declared by the Government of Punjab, Forestry, wildlife & Fisheries Department.
10. Amendments in "The Directorate General Protocol, Punjab, Service Rules, 2005" in the 2nd and 6th Schedules vide Notification No. SOR-III(S&GAD)1-12/2004(P) dated 19-03-2024 published in the official Punjab Gazette through Notification No.37 of 2024 dated 21.03.2024.

SELECTED ARTICLES

1. ACADEMIC.OUP

https://academic.oup.com/arbitration/advance-article-abstract/doi/10.1093/arbint/aiae009/7634165?redirectedFrom=fulltext

To Reason or Not to Reason: Arbitral Awards—The Conflict Between Conciseness and The Duty to Provide Reasons Under National Laws and International Rules by Noam Zamir & Neil Kaplan

Abstract:

The duty to give reasons in arbitral awards has a mixed history. While it can be traced back to the second part of the 20th century in England, it has been part of accepted practice in civil law countries for a long period. It has become the norm in international arbitration, both in commercial disputes and in investment disputes. While the duty to

give reasons is, in general, positive, this article suggests that many international awards tend to be too long. This prolongs the arbitration proceedings and increases costs—both in terms of the arbitrators' fees and the costs that the parties to dispute must bear while waiting for the award to be issued. To tackle this problem, the article examines the required scope of reasoning in international awards; it then discusses why many international awards tend to be too long. Finally, it suggests ways in which awards can and should be shorter.

2. LATEST LAW.COM

https://www.latestlaws.com/category/articles/

Recent Regulatory Developments in The Indian Competition Law Regime by Ketan Mukhija

Introduction:

*In the dynamic landscape of competition law in India, the year 2023 marked a series of pivotal developments that shaped the country's approach towards anti-trust and fair market practices. On April 11, 2023, the Competition (Amendment) Act, 2023 ("**Amendment Act**"), was enacted, laying the groundwork for substantial changes including and not limited to implementation of a deal value threshold, establishment of a settlement and commitment mechanism, widening the scope of the definition of 'control', inclusion of facilitators of anti-competitive agreements or cartels under the purview of persons liable for entering into anti-competitive agreements, revised timelines, and penalties.*

3. HARVARD LAW REVIEW

https://harvardlawreview.org/print/vol-137/non-extraterritoriality/

Non-extraterritoriality by Carlos M. Vázquez

ABSTRACT:

The extraterritorial application of statutes has received a great deal of scholarly attention in recent years, but very little attention has been paid to the non-extraterritoriality of statutes, by which I mean their effect on cases beyond their specified territorial reach. The question matters when a choice-of-law rule or a contractual choice-of-law clause directs application of a state's law and the state has a statute that, because of a provision limiting its external reach, does not reach the case. On one view, the state has no law for cases beyond the reach of the statute. The territorial limitation is a choice-of-law rule; it instructs courts to adjudicate the case under the law of another state. Because one state's choice-of-law rules are not binding on the courts of other states, the provision may be disregarded by such courts, which may apply the statute's substantive provisions to cases beyond the statute's specified scope. On another view, cases beyond the reach of the statute are subject to another law of that state, such as its more general common law rules. A third view agrees with the first view that the enacting

state has no law for excluded cases but insists that the provision limiting the law's scope is not a choice-of-law rule. The provision is written as a limit on the law's reach, and this substantive limitation must be respected by all courts. The statute may not be applied to cases beyond its specified scope. Each of the competing understandings of non-extraterritoriality has prominent judicial and scholarly defenders, and each finds support in successive iterations of the Restatement of Conflict of Laws. This Article considers the judicial and scholarly support for each of the three positions and defends the view that external scope limitations are choice-of-law rules. Limitations on external scope ordinarily reflect the lawmaker's deference to the legislative authority of other states. They do not reflect a legislative preference that a statute's substantive provisions not be applied to cases beyond its specified scope. If the legislature did intend to establish a different rule for cases involving out-of-state persons or events, the provision limiting the statute's scope would in most cases be unconstitutional. In function and intended effect, a statutory provision limiting a statute's external scope is a choice-of-law rule and, as such, may be disregarded by the courts of other states. But this position poses a conundrum: If a state has no law for cases beyond a statute's territorial scope, do courts violate their duty to decide cases according to law when they apply the statute to a set of facts that the statute does not purport to reach? Resolving this puzzle yields valuable insights into the nature of choice-of-law rules and the choice-of-law enterprise.

4. COURTING THE LAW

https://courtingthelaw.com/2024/02/02/commentary/should-consumer-courts-be-digitalized-and-have-jurisdiction-in-essential-services-and-criminal-matters/

Should Consumer Courts be Digitalized and Have Jurisdiction in Essential Services and Criminal Matters? By Waseem Abbas

In Pakistan, consumers are among the most vulnerable groups, largely due to a lack of awareness about their rights and the ineffective implementation of existing consumer protection laws. It is of utmost importance to address the plight of consumers who fall victim to unscrupulous sellers, manufacturers and dealers selling faulty goods and providing substandard services. Consumer protection laws are designed in this regard to:

- *promote fair competition;*
- *ensure transparency in information dissemination;*
- *enhance access to quality goods and services; and*
- *establish regulations for swift and fair justice.*

The safeguarding of consumer rights is integral to any educated and stable society, as consumers are the backbone of the economy. Even in Islam, emphasis is placed on fair dealing, fulfilling contractual obligations, avoiding misrepresentation in sales and maintaining ethical business practices. The concept of consumer protection encompasses various aspects, including:

- *product liability;*
- *privacy rights;*
- *prevention of unfair business practices;*
- *prevention of fraud; and*
- *addressing misrepresentation in consumer-business interactions.*

The United Nations also recognized the significance of consumer protection by issuing guidelines on the matter in 1985.

Regrettably, Pakistani consumers have long been neglected, either intentionally or unintentionally, by both government and manufacturers, as existing laws have not been fully enforced. Consumer protection and consumer rights aim to shield buyers from fraudulent practices employed by sellers in selling goods and services. Additional regulations have also been imposed on businesses to disclose more details regarding their products, ensuring that consumers are well-informed and protected before making a purchase…

5. COURTING THE LAW

https://courtingthelaw.com/2024/01/28/commentary/smart-contracts-and-crypto-assets-in-pakistan-a-legal-perspective/

Smart Contracts and Crypto-Assets in Pakistan: A Legal Perspective by Rana Mahad Meraj

What are Smart Contracts?

A smart contract is just like a traditional contract. However, in effect, it is a computer program that exists on a blockchain, carrying the terms of a transaction to which the parties agree. These automate the process of contract management and execution and are used largely today in the trade of crypto-assets. The aim of smart contracts relates to the elimination of avoidable third parties which played intermediary roles in transactions in traditional contracts. The effect of this is to minimize the chances of maliciousness and fraud.

Legal Hackers Lahore (a US based network of legal professionals working at the intersection of law and technology) describes smart contracts in the following words:

"Smart contracts are contracts stored in blockchains which allows them to be executed without intervention of brokers, notaries, agents and the like to make transactions. The powerful encryption of blockchains prevents anyone from being able to interfere with the code thus essentially making smart contracts efficient, neutral, mistake-free, safe, tamper-free, ensuring that the data is not lost or stolen. Time to do away with the tedious patwari system in Pakistan and shift land registration and transfer mechanisms onto blockchains?"…

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-04-2024 to 15-04-2024)

A Summary of Latest Judgments Delivered by the Supreme Court of Pakistan & Lahore High Court, Legislation/Amendment in Legislation and important Articles

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

21.	Lahore High Court	Impact of delay in reporting incident of child sexual abuse; nature and necessity of voir dire test; conviction on the basis of solitary uncorroborated testimony of a child victim of sexual abuse; admissibility of hearsay evidence from a child victim of sexual abuse	Criminal Law	24
22.		Conjunction of two sisters in marriage is considered Haram; Muslim law identifies nineteen classes of women, known as "Moharramat," with whom marriage is prohibited; perpetual and temporary prohibitions based on consanguinity, fosterage, and affinity; Hanafi jurists classify marriages: Saheeh (valid), fasid (irregular), and batil (void), based on their validity; Talaq is not effective until the expiration of Iddat, prohibiting marriage to an ex-wife's sister during her Iddat period; methods to affect talaq; Proceedings are not invalidated if an investigation reveals a non-cognizable offence instead of a cognizable one; Shariah law prohibits marrying a divorced wife's sister during her Iddat period		27
23.		Conviction of an accused requires independent corroboration if co-accused with similar charges is acquitted on the same evidence		30
24.		Allotment of land within prohibited zones and overriding previous prohibitions; Absence of review power for Board of Revenue decisions; Statutory basis required for review authority.	Civil Law	31
25.		Meaning and implications of "provisional" in legal documents; Nature and duration of provisional documents; Authority's power to recall orders creating rights and principle of “locus poenitentiae”.		32
26.		Finality and effectiveness of marriage dissolution under Family Courts Act; Non-impact of unreturned benefits on Khula-based dissolution decree; Voluntariness of DNA testing; Application of Section 12(2) C.P.C. in cases of fraud; Court's discretion in handling Section 12(2) C.P.C. applications; Non-mandatory issue framing and evidence recording; Exclusivity of remedy choice by litigants		34
27.		Post-mortem report as a documented expert opinion, how to produce it in court; mere production of post mortem report is not sufficient; secondary evoidence of doctor/expert; section 509 Cr.P.C best course to preserve evidence of doctor; proof of non-availability of doctor for secondary evidence; motive how to be proved; abscodence of	Criminal Law	36

LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Pakistan Engineering Council through its Chairman & others v. Muhammad Sadiq & others and other Civil Appeals
Civil Appeal No.1471 of 2013, No.53 of 2014 and No.187 to 191 of 2018 & C.M.A.5008/2014 in C.A.1471/2013
Mr. Justice Qazi Faez Isa, HCJ, **Mr. Justice Muhammad Ali Mazhar,** **Ms. Justice Musarrat Hilali**
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1471_2013.pdf

Facts: These Civil Appeals with leave of the Court are directed against the judgment passed by the Peshawar High Court whereby the Writ Petition filed by the respondent was allowed; the judgment passed by the Peshawar High Court whereby F.A.O. filed by the appellant was dismissed, and the judgment passed by the Lahore High Court whereby the Intra Court Appeals filed by the appellants were dismissed.

Issues: i) Whether educational institutions are competent to manage their own affairs without any outside intervention from executive or judicial organs?
ii) What is purpose of constituting the Pakistan Engineering Council (the PEC) under the Pakistan Engineering Council Act, 1976 (the PEC Act)?
iii) What is objective of the Higher Education Commission Ordinance, 2002?
iv) Whether B.Tech. (Hons.) can be deemed to be equivalent to an engineering bachelor's degree programme?
v) What is scope and power of the National Technology Council constituted by the Higher Education Commission?
vi) Whether court can set down the guidelines or conditions of eligibility or fitness for appointment or promotion to any particular post?

Analysis: i) In the affairs of admission and examination in the educational institutions, the concerned authorities are vested with the powers and jurisdiction to lay down the eligibility criteria in their own rules, regulations, or prospectus. They are independent to follow their own policy for admission, and in other affairs, therefore, the academic, administrative, and disciplinary autonomy of a university must be respected. The interference by the courts in the admission policy would give rise to glitches for the said institutions to administer the matters harmoniously and efficiently. The educational institutions are competent to manage their own affairs without any outside intervention from executive or judicial organs unless they contravene or disregard the compass of their authority or act in breach of applicable statutes or admission policies as laid down in the prospectus.
ii) The purpose of constituting the PEC under the PEC Act is to make provisions for the regulation of the engineering profession and to regulate the engineering profession with the vision that the engineering profession shall function as a key driving force for achieving rapid and sustainable growth in all national, economic, and social fields and maintain realistic and internationally relevant standards of professional competence and ethics for engineers, and license engineers, and

engineering institutions, to competently and professionally promote and uphold the standards and the Council, covering the entire spectrum of engineering disciplines, functions as an apex body to encourage and promote the pursuit of excellence in engineering profession, and to regulate the quality of engineering education and the practice of engineering.

iii) While the objective of the HEC Ordinance (which repealed "The University Grants Commission Act, 1974") is to provide the establishment of the HEC in the interest of improvement and promotion of higher education, research, and development. The powers and functions of the HEC are laid down under Section 10 of the HEC Ordinance for the evaluation, improvement, and promotion of higher education, research, and development. Clause (o) of the aforesaid functions germane to the grant of equivalence…

iv) If the B.Tech. (Hons.) is deemed to be equivalent to an engineering bachelor's degree programme then there was no justification to provide in the aforesaid regulation that the candidate possessing a four year degree/qualification of B.Tech (Hons.), B.S., B.Sc., Bachelor of Technology or equivalent qualification duly recognized by the HEC seeking admission against 02% reserved seats of B.Tech (Hons.)/B.S./B.Sc./Bachelor of Technology shall be considered for admission in 2021 and after, with two years of exemption. The criteria set down for admission is self-explanatory that both degrees are distinct, with the rider that if a person who qualified B.Tech. (Hons.) applies for admission to Engineering Bachelor's Degree programme offered by Engineering Institutions and Universities, he can avail certain exemptions subject to assessment of courses and satisfying the PEC Regulations. The rationale of the PEC Act is to devise the provisions for regulation of the engineering profession and for achieving this task, the PEC has been constituted comprising of specialists and experts in the field. The main function of the PEC is the recognition and accreditation of engineering qualifications for registration in accordance with the PEC Act. If the entire facts are seen in juxtaposition, it is clear beyond any shadow of doubt that the PEC persistently expressed to HEC that engineering and technology qualifications are two distinct streams of the engineering profession and cannot be considered equivalent. Both qualifications are regulated internationally through their separate accords i.e. "Engineering Qualification" by the Washington Accord while "Engineering Technology" by the Sydney Accord. The Washington Accord was signed in 1989 for providing mutual mechanism for recognition of graduates of accredited programme among its signatories which is a self-governing, autonomous agreement between national organizations (signatories) that provide external accreditation to tertiary educational programme that qualify their graduates for entry into professional engineering practice. Pakistan is also a signatory to this Accord and the status of the PEC has been duly acknowledged in the treaty. The signatories are responsible for undertaking a clearly defined process of periodic peer review to ensure that the accredited programmes are substantially equivalent and their outcomes are consistent with the published professional engineer graduate attribute exemplar. The PEC has also entered into

other international agreements such as the International Professional Engineers Agreement (IPEA), and the Federation of Engineering Institutions of Asia and the Pacific (FEIAP). Whereas the Sydney Accord was signed in June 2001 by seven founding signatories representing, Australia, Canada, Hong Kong, Ireland, New Zealand, United Kingdom, and South Africa, and is specifically focused on academic programmes dealing with engineering technology. In fact, the Sydney Accord acknowledges the accreditation as a key foundation for the practice of engineering technology in each of the countries or territories covered by the Accord and recognizes the important roles of engineering technologists as part of a broader engineering team. The gist of documents placed before us unequivocally demonstrate that that the degree of B.Tech. (Hons.) is not equivalent to B.E. degree but both are two distinct disciplines of knowledge in the field of Engineering and Technology with distinct syllabi and programme objectives but may be treated at par for recruitment, pay scales and grades. The covenants of the MOU between HEC and PEC also recognizes that substantial equivalence, authorization, and accreditation of engineering qualification can only be issued by the PEC which is responsible for granting engineering professional equivalence in consultation with the HEC. The word "equivalent" has been defined in the different law lexicons… According to PEC, B.Tech. courses are implementation oriented and B.Sc. engineering courses are design and research oriented. The NCRC in 2010 had also decided that B.Tech. (Hons.) is not equivalent to B.Sc. (Eng.). Both qualifications are also regulated internationally through two separate accords. The Bachelor of Science in Engineering emphasizes theories and advanced concepts, while an Engineering Technology degree emphasizes hands-on application and implementation with the major difference that B.E. is more knowledgebased while B.Tech. is skill-oriented. According to the Michigan Technological University, USA, "Engineering graduates" apply scientific, theoretic, and economic knowledge to research, invent, design, and build structures, devices, and systems, making for a broad discipline that encompasses specialized fields of engineering. While "Engineering technology graduates" develop, design, and implement engineering and technology solutions, typically pursuing engineering careers in manufacturing firms on design, construction, and product improvement [Ref: https://www.mtu.edu/admissions/academics/majors/differences].

v) One more important aspect that cannot be ignored is that under Section 10 (e) of the HEC Ordinance, the HEC has been vested with the powers to set up national or regional evaluation councils or authorize any existing council or similar body to carry out accreditation of Institutions including their departments, faculties, and disciplines by giving them appropriate ratings. Pursuant to aforesaid power and function, the HEC has constituted the National Technology Council ("NTC"), vide notification (HEC No.19-3 /HEC/HRM/2015/9721) dated 07.09.2015 which was published in the Gazette of Pakistan on 02.10.2015. The NTC has been given a mandate to carry out accreditation of all 04-year programs leading to technology degrees over a span of 16 years of learning. The technology

education curriculum has been aligned pursuant to the guidelines of the HEC with the spirit of outcome-based education system in conformity with the Sydney Accord. Now, the NTC is empowered to accredit Higher Education Institutions Programs for graduate technologists and define accreditation and certification standards. The NTC is comprised of a Chairman, 23 members including the representative of PEC, and 04 other representatives of different Ministries. The NTC has started accreditation to the Higher Education Institutions (HEI) with the current standards of technology education degree programs comparable with international standards. Besides the role or mandate of accreditation, the NTC has also started registration of BSc Engineering Technology, B.Tech. (Hons.), B.Tech, B.S. Technology/B.E. Technology/B.Sc. Technology Degrees and maintaining National Register of Technologists (NRT). The 'Professional Engineering Technologist' may also apply after acquiring 5 years of postqualification experience in the relevant technology discipline. The formation of NTC and conferring mandate of accreditation and registration by itself is sufficient to comprehend that in order to end this long standing dispute or controversy, the NTC has been constituted parallel to the PEC for accreditation and registration of Engineering Technologist, which is sufficient prove that B.Tech. (Hons.) is not equivalent B. Sc. (Engineering) and for this reason, the PEC does not allow accreditation and registration of Engineering Technologists. The underlying wisdom and objective of setting up the NTC is to engage in sustainable policy framework for separate career paths for engineers and technologists in sectors where both are employed in a parallel service track. According to the learned Additional Attorney General, the NTC has also taken some material steps for attaining the status of provisional signatory to the Sydney Accord for performing its task more proactively and dynamically [Ref: https://www.ntc-hec.org.pk].

vi) The essential qualifications for appointment to any post is the sole discretion and decision of the employer. The employer may prescribe required qualifications and the preference for appointment of candidate who is best suited to his requirements. The court cannot set down the guidelines or conditions of eligibility or fitness for appointment or promotion to any particular post. In no case can the Court, in the garb of judicial review, seize the chair of the appointing authority to decide what is best for the employer and impose conditions in internal recruitment matters, unless there is a grave violation of applicable law, rules and regulations. In the private sectors, the employer is free to decide the criteria of appointment and promotions and other terms and conditions of employment and for this purpose, may set down its business strategy, H.R. policies, and progression plans. Whereas for the appointment, transfer and promotion in the civil service, the Appointment, Promotion and Transfer Rules framed by the Federal Government and Provincial Governments separately under their Civil Servants Acts are prevailed and followed and in case of statutory bodies, appointments and promotions are made in accordance with their statutory requirements, rules and regulations; but in all such circumstances, it is within the domain of the competent

authority to prescribe required qualification and experience in the recruitment and promotion process. The courts cannot force to accept or interchange any other qualification equivalent to the specific post with specific qualification advertised for inviting applications for recruitment or setting benchmark for promotion of employees to any particular post or grade on attaining any particular length of service. According to the Fida Hussain case (supra) also, this Court held that it is the domain of the Government concerned to decide whether a particular academic qualification of a civil servant employee is sufficient for promotion from one grade to another higher grade, whereas it is in the domain of the PEC to decide as to whether a particular academic qualification can be equated with another academic qualification, but it has no power to say that the civil servants/employees holding particular academic qualifications cannot be promoted from a particular grade to a higher grade. The same principle was reiterated in the case of Maula Bux Shaikh (supra).

Conclusion: i) The educational institutions are competent to manage their own affairs without any outside intervention from executive or judicial organs unless they contravene or disregard the compass of their authority or act in breach of applicable statutes or admission policies as laid down in the prospectus.
ii) See corresponding analysis No. ii.
iii) See corresponding analysis No. iii.
iv) B.Tech. (Hons.) is not equivalent to an engineering bachelor's degree programme and both degrees are distinct.
v) See corresponding analysis No. v.
vi) The court cannot set down the guidelines or conditions of eligibility or fitness for appointment or promotion to any particular post and the Court cannot, in the garb of judicial review, seize the chair of the appointing authority to decide what is best for the employer and impose conditions in internal recruitment matters, unless there is a grave violation of applicable law, rules and regulations.

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2. **Supreme Court of Pakistan**
Babar Anwar v. Muhammad Ashraf and another
Civil Petition No. 5972 OF 2021
Mr. Justice Qazi Faez Isa, CJ, Mr. Justice Muhammad Ali Mazhar, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.p._5972_2021.pdf

Facts: The respondent no. 01 filed a suit for declaration and cancellation of gift deed which was decreed. The petitioner filed appeal which was dismissed, thereafter, the petitioner filed a civil revision which was also dismissed, hence, this Civil Petition.

Issues: i) Whether two inconsistent pleas of gift of property and purchase of same property for valuable consideration can be raised in defense?
ii) Whether consideration like love and affection in matter of alienation can be supplanted on the principal if such element is springing out from a delegatee or

agent and whether attorney or agent may gift the property?
iii) What is scope of jurisdiction vested in High Court u/s 115 of CPC and can court interfere in concurrent conclusions arrived at by the courts below?

Analysis: i) The petitioner pleaded in his defense that he purchased the property in question against valuable consideration, but at the same time, he was also claiming the property as a lawful donee. Both pleas are mutually destructive if considered in juxtaposition. If it was a case of gift, then the plea of sale was misleading and erroneous, and if the property was purchased against valuable consideration, then there was no logical reason for the execution of a gift deed rather than a conveyance deed to unveil a straightforward sale transaction.
ii) A gift emanates from love and affection and sometime it is quid pro quo personal services rendered by the donee to the donor. Consideration like love or affection in the matter of alienation must proceed from the original and real owner of the property in relation to the donee; such an element if springing out from a delegatee or agent, could not be supplanted on the principal, not being the donor himself. Nothing is presented on record through cogent evidence that the attorney ever asked for the permission or consent of his principal to gift the property in question to the petitioner; therefore, such a gift was not validated by the courts below in three concurrent judgments. The attorney or agent may gift the property on express permission and instructions of his principal.
iii) The jurisdiction vested in the High Court under Section 115 of the Code of Civil Procedure, 1908 ("C.P.C.") is to satisfy and reassure that the order is within its jurisdiction and the Court below has not acted illegally or in breach of some provision of law, or with material irregularity, or by committing some error of procedure in the course of the trial which affected the ultimate decision. Furthermore, the High Court has very limited jurisdiction to interfere in the concurrent conclusions arrived at by the courts below while exercising power under Section 115, C.P.C.

Conclusion: i) Two inconsistent pleas of gift of property and purchase of same property for valuable consideration are mutually destructive if considered in juxtaposition. If the property is purchased against valuable consideration, then there is no logical reason for the execution of a gift deed.
ii) See under analysis no. 02.
iii) See under analysis no. 03

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3. **Supreme Court of Pakistan**
Pervaiz Rasheed v. PTV
Civil Review Petition No. 835/2018 in HRC No. 3654/2018 AND Civil Review Petitions No. 866, 867 and 868/2018
Mr. Justice Qazi Faez Isa, Mr. Justice Irfan Saadat Khan , Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p._835_2018.pdf

Facts: The Review Petitions assail the judgment of the august Supreme Court in respect of the appointment of Mr. Attaul Haq Qasmi as a Director of Pakistan Television Corporation ('PTV'**).**

Issues: (i) Scope of review jurisdiction.
(ii) Scope of Article 184(3) of the Constitution.

Analysis: (i) The scope of review jurisdiction is limited however; it can be invoked when a mistake of law or a factual error, having material consequences, has occurred.
(ii) Article 184(3) of the Constitution is an extraordinary power bestowed by the Constitution on the Supreme Court and it may be invoked when Fundamental Rights of the people are under attack or are being undermined. It is questionable whether the emoluments of a single individual would justify invoking the jurisdiction of this Court under Article 184(3). The applicability of the referred Articles 18 and 25 is also not self-evident, and it has not been explained in the judgment under review, how either of these two provisions were attracted. In these circumstances, to seek the recovery of an arbitrarily determined loss was neither legally permissible nor factually correct.

Conclusion: (i) See analysis part above.
(ii) See analysis part above.

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4. **Supreme Court of Pakistan**
National Bank of Pakistan through its President etc. v. Muhammad Adeel etc.
C.P.L.A.1800-L/2018 and C.P.L.A.1364/2023
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Muhammad Ali Mazhar Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1800_l_2018.pdf

Facts: CPLA has been filed against the order passed in intra-court appeal which was dismissed on the ground of maintainability, being hit by the proviso to Section 3(2) of the Law Reforms Ordinance, 1972 ("Ordinance").

Issue: Scope of Section 3(2) of the Law Reforms Ordinance 1972

Analysis: The main test to determine whether an ICA is available under the proviso to Section 3(2) of the Ordinance is to see whether the proceedings, in which the original order has been passed, provide for an appeal, revision or review (collectively referred to as "appeal," for convenience) to any Court, Tribunal or authority against the original order. Applying this test what needs to be seen and verified is whether the proceedings provided for an appeal against the original order and not whether parties to the proceedings enjoyed the right to appeal against the original order. The proviso under Section 3(2) of the Ordinance is proceedings specific and not parties specific. So it matters less if one of the parties to the proceedings is not entitled to right of appeal against the original

order passed in the said proceedings. In the instant case, the proceedings under the National Bank of Pakistan (Staff) Service Rules, 1973, provide for an appeal under Rule 40 against the original order. This is sufficient to disentitle the parties to maintain an intra-court appeal, irrespective of the fact that one or more of the parties to the proceedings did not have a right of appeal against original order.

Conclusion: The proviso under Section 3(2) of the Ordinance is proceedings specific and not parties specific. If the proceedings in which the original order has been passed provide for an appeal, revision or review to any Court, Tribunal or authority against the original order then this is sufficient to disentitle the parties to maintain an intra-court appeal, irrespective of the fact that one or more of the parties to the proceedings did not have a right of appeal against original order.

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5. **Supreme Court of Pakistan**
Mst. Sehat Bibi d/o late Daulat Khan v. Bahar Khan s/o late Daulat Khan & 2 others
Civil Appeal No.26-Q of 2017
Mr. Justice Shahid Waheed, **Ms. Justice Musarrat Hilali**
https://www.supremecourt.gov.pk/downloads_judgements/c.a._26_q_2017.pdf

Facts: This Civil Appeal, under Article 185 (2) (e) of the Constitution has been filed against the judgment and decree passed by the High Court in Civil Revision. Through the impugned judgment, Civil Revision filed by the Appellant was accepted and the judgments and decrees passed by the Courts below were set-aside; resultantly the suit of the Appellant was decreed to the extent of her share out of the sale price.

Issues: i) When do legal heirs inherit property to the extent of their share?
ii) Whether adverse inferences can be drawn from withholding the best evidence by any party?
iii) Whether a deprived legal heir is entitled to get a share out of entire property of his or her predecessor or is only entitled to get a share of the sale price of his/her share if the property has already been sold?

Analysis: i) It is an established principle of law that legal heirs inherit property to the extent of his/her share the very moment his/her predecessor passes away.
ii) Record shows that Respondent No.l has failed to produce any witness to prove the alleged oral gift in his favour. Hence by withholding the best evidence adverse inference can be drawn under Article 129 (g) of Qanun-e-Shahadat Order, 1984.
iii) The High Court, while setting aside the judgments and decrees of the Trial Court and the Appellate Court, completely failed to apply the law and granted only 1 /3rd share out of the sale price to the Appellant. The grant of 1/3rd share out of the sale price and exclusion of the Appellant from the inheritance was against the law, therefore, while setting aside the impugned judgment, we hold that the Appellant is entitled to 1/3rd share out of the entire property of her late father. Resultantly, the Inheritance Mutation and all subsequent mutations attested on the basis of said inheritance mutation are hereby cancelled as any superstructure built

on weak foundation is not sustainable.

Conclusion: i) It is an established principle of law that legal heirs inherit property to the extent of his/her share the very moment his/her predecessor passes away.
ii) Adverse inferences can be drawn from withholding the best evidence by any party.
iii) A deprived legal heir is entitled to get a share out of entire property of his or her predecessor and grant of share out of the sale price and exclusion from the inheritance is against the law.

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6. **Supreme Court of Pakistan**
Munawar Alam Khan v. Qurban Ali Mallano and others
Criminal Petition No. 31-K of 2022
Mr. Justice Munib Akhtar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._31_k_2022.pdf

Facts: Through this petition, the petitioner has challenged the legality of order passed by the High Court of Sindh, whereby his Criminal Miscellaneous was dismissed while maintaining the order passed by Additional Sessions Judge/Justice of Peace in Criminal Miscellaneous filed under sections 22-A and 22-B Cr.P.C.

Issue: Whether the application under section 22-A and 22-B of Cr.P.C., should be lightly entertained and decided in mechanical manner for issuing direction to the police to lodge an FIR, conduct investigation in the matter and prosecute accused?

Analysis: We observe that there are many precedents regarding misuse of provisions of Sections 22-A and 22-B Cr.P.C. and it is the prime duty of the Court that such misuse be taken care of and application under section 22-A and 22-B of Cr.P.C., should not be lightly entertained and decided in mechanical manner for issuing direction to the police to lodge an FIR, conduct investigation in the matter and prosecuted accused. It is settled principle of law that each and every case is to be decided on its own peculiar facts and circumstances.

Conclusion: The application under section 22-A and 22-B of Cr.P.C., should not be lightly entertained and decided in mechanical manner for issuing direction to the police to lodge an FIR, conduct investigation in the matter and prosecute accused.

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7. **Lahore High Court**
The State v. Zahid Mehmood Goraya, Advocate
Criminal Original (Suo Moto) No.20741-W of 2024
Mr. Justice Malik Shahzad Ahmad Khan, CJ
https://sys.lhc.gov.pk/appjudgments/2024LHC1450.pdf

Facts: Reference received from the one of the Court of Lahore High Court for further contempt proceedings against Advocate/respondent as envisaged under sections 3 & 11 of the Contempt of the Court Ordinance, 2003 read with Article 204 of the

Constitution of the Islamic Republic of Pakistan, 1973, punishable under section 5 of the ordinance ibid.

Issue: Under what provisions of law the Advocate/respondent is convicted for willful and deliberate civil, criminal and judicial contempt of the Court?

Analysis: After going through the abovementioned evidence (oral as well as documentary), produced against the respondent, I have come to this irresistible conclusion that Advocate/respondent has committed willful and deliberate civil, criminal and judicial contempt of the Court, as envisaged under sections 3 & 11 of the Contempt of Court Ordinance, 2003, read with article 204 of the Constitution of Islamic Republic of Pakistan, 1973, punishable under section 5 of the Contempt of Court Ordinance, 2003. The charge under section 5 of the Ordinance ibid against the respondent has fully been proved beyond the shadow of any doubt. In the light of above, Advocate (respondent/contemnor) is convicted for the offence under section 5 of the Contempt of Court Ordinance, 2003…

Conclusion: See under Analysis.

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8. **Lahore High Court**
Ch. Muhammad Arshad v. Parvez Elahi and two others
Writ petition No.20729 of 2024
Mr. Justice Shahid Bilal Hassan, Mr. Justice Masud Abid Naqvi
https://sys.lhc.gov.pk/appjudgments/2024LHC1337.pdf

Facts: Through this Writ Petition, the petitioner has challenged the validity of impugned order passed by the Election Tribunal whereby the Election Appeal filed by respondent No.1 was allowed by setting aside order passed by the Returning Officer and the nomination papers of respondent No.1 were accepted.

Issues: i) Whether the Returning Officers should reject the nomination paper even if the defect is not of substantial nature?
ii) Whether there is any column in the election form where a candidate can give the details of his weapons?
iii) Whether there is any bar for a candidate to participate in the election as an independent candidate or to participate with certificate of a party being a party's candidate?

Analysis: i) It was the duty of Returning Officer to scrutinize nomination paper, in the best interest of justice and to uphold the fundamental right of the individual to contest elections. Instead of rejecting the nomination paper, Returning Officer can direct to mention the same in his statement of assets because the second proviso to Section 62(9) of the Act specifically prescribes for the Retuning Officers that they should not reject any nomination paper on the ground of any defect which is not of a substantial nature and may allow such defect to be remedied forthwith.

ii) There is no column in election form where a candidate can give the details of his weapons but the value of these weapons are duly disclosed/ mentioned in statement of assets.

iii) There is no bar for a candidate to participate in the election as an independent candidate or to participate with certificate of a party being a party's candidate.

Conclusion: i) The Retuning Officers should not reject the nomination paper on the ground of any defect which is not of a substantial nature and may allow such defect to be remedied forthwith.

ii) There is no column in election form where a candidate can give the details of his weapons.

iii) There is no bar for a candidate to participate in the election as an independent candidate or to participate with certificate of a party being a party's candidate.

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9. **Lahore High Court**
The State v. Adil Zaib
Murder Reference No.57 of 2022
Adil Zaib v. The State, etc.
Criminal Appeal No.699 of 2022
Mr. Justice Sadaqat Ali Khan, Mr. Justice Ch. Abdul Aziz.
https://sys.lhc.gov.pk/appjudgments/2024LHC1300.pdf

Facts: Appellant has filed Criminal Appeal against his conviction and the trial Court has sent Murder Reference for confirmation of his death sentence or otherwise, which are being decided through this single judgment.

Issues: i) Whether the minor and general discrepancies occurring in statements of prosecution witnesses can be fatal to the prosecution case?

ii) What would be status of defence plea of accused assumed in his statement recorded under section 342 of the Criminal Procedure Code, 1898, if neither he opts to appear as witness under section 340 (2) of the Code ibid nor he produces defence evidence in support of such defence plea?

Analysis: i) The minor and general discrepancies in the statements of the prosecution witnesses do often occur in every case when witnesses are cross-examined after a long time of the occurrence. The minor and general discrepancies occurring in statements of prosecution witnesses cannot be deemed fatal to the prosecution case.

ii) If accused, in his statement recorded under section 342 of the Criminal Procedure Code, 1898, pleads himself innocent, denies his involvement in the case and agitates that he has falsely been involved in the case but neither he himself appears to depose as his witness under section 340 (2) of the Code ibid nor he produces any defence evidence in support of his defence plea, then his such defence plea cannot be believed.

Conclusion: i) The minor and general discrepancies occurring in statements of prosecution witnesses cannot be deemed fatal to the prosecution case.
ii) If accused neither opts to appear as his own witness under section 340 (2) of the Criminal Procedure Code, 1898 nor he produces any defence evidence in support of his defence plea assumed in his statement recorded under section 342 of the Code ibid, then his such defence plea would be neither plausible nor believable and would be discarded.

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10. **Lahore High Court**
Sirdar Mohy Ud Din Khan Khosa v. Election Commission of Pakistan, Islamabad & others
W. P. No.4005 of 2024
Mr. Justice Faisal Zaman Khan, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC1305.pdf

Facts: The Petitioner assailed orders passed by the Returning Officer, and Tribunal, respectively, whereby his nomination papers for provincial constituency were rejected concurrently.

Issue: Where admittedly there is no default in payment of income tax, then whether an error / defect while making certain entries in the columns of the affidavit, is not substantial innature, therefore, in view of proviso (ii) to sub-section (9) of section 62 of the Elections Act, 2017, the same could be remedied?

Analysis: It is evident from the impugned order of the Returning Officer that petitioner had deposited the afore-noted due tax. Petitioner has also tendered NOC dated 15.03.2024, which reflects that no tax demand was outstanding against petitioner on account of income tax till said date. Thus, it is clear that no liability was existing against petitioner and he was not defaulter in the payment of due tax. In these circumstances, wrong entries in the columns of *total income* and *income tax paid* of petitioner's affidavit are mere bona fide mistakes / clerical errors in preparing the affidavit, which are not so grave to invite rejection of his nomination papers. The said entries could have been fatal if the omission would have been with the purpose to avoid payment of income tax or intended to conceal some wrongdoing. Needless to observe that the Returning Officer has been given the power under proviso (ii) to sub-section (9) of section 62 of the ElectionsAct, 2017 to correct such defects in the nomination papers which are not of substantial nature, but no such exercise wasundertaken in the instant case. In these circumstances, the impugned orders are not legally sustainable.

Conclusion: Where admittedly there is no default in payment of income tax, then an error / defect while making certain entries in the columns of the affidavit, is not substantial in nature, therefore, in view of proviso (ii) to sub-section (9) of section 62 of the Elections Act, 2017, the same could be remedied.

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11. **Lahore High Court**
Sirdar Muhammad Umer Khan Khosa v. Election Commission of Pakistan, Islamabad & others
W. P. No. 4216 of 2024
Mr. Justice Faisal Zaman Khan, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC1310.pdf

Facts: Through instant petition, petitioner has assailed order passed by the Returning Officer and judgment passed by learned Election Tribunal, respectively, whereby his nomination papers, were rejected on the grounds of non-submission of requisite NOCs and attachment of transcript of petitioner's brother, concurrently.

Issues: i) Whether omission to tender the requisite NOCs while filing nomination papers is a lapse / defect of such a grave nature which may invite extreme measure of rejection of the nomination papers?
ii) Whether right to contest election is a fundamental right guaranteed by Article 17(2) of the Constitution of the Islamic Republic of Pakistan, 1973, and the provisions in the Elections Act, 2017 that curtail or in any manner affect this right are to be construed strictly and applied restrictively, especially when the defect is not of substantial nature and can be remedied?

Analysis: i) In this scenario, the omission to tender the said requisite NOCs while filing nomination papers is not a lapse / defect of such a grave nature which may invite extreme measure of rejection of the nomination papers. This lapse could have been fatal if it was the omission was designed to avoid the liability or intended to conceal some unlawful activity.
ii) Needless to say that right to contest election is a fundamental right guaranteed by Article 17(2) of the Constitution of the Islamic Republic of Pakistan, 1973, and the provisions in the Elections Act, 2017 that curtail or in any manner affect this right are to be construed strictly and applied restrictively, especially when the defect is not of substantial nature and can be remedied.

Conclusion: i) Omission to tender the requisite NOCs while filing nomination papers is not a lapse / defect of such a grave nature which may invite extreme measure of rejection of the nomination papers.
ii) Right to contest election is a fundamental right guaranteed by Article 17(2) of the Constitution of the Islamic Republic of Pakistan, 1973, and the provisions in the Elections Act, 2017 that curtail or in any manner affect this right are to be construed strictly and applied restrictively, especially when the defect is not of substantial nature and can be remedied.

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12. **Lahore High Court**
Zubair Khan v. Commissioner Inland Revenue Jhelum Zone etc.
Income Tax Reference No.03 of 2023
Mr. Justice Mirza Viqas Rauf, Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1441.pdf

Facts: This Reference Application under Section 133 of the Income Tax Ordinance, 2001 has been filed by the Applicant, being dissatisfied by the order passed by the Appellate Tribunal Inland Revenue, Division Bench-I, Islamabad.

Issues: i) Whether before invoking the provisions of Section 122 of Income Tax Ordinance, 2001, a separate notice to the taxpayer in terms of Section 111 of the Ordinance is pre-requisite to include unexplained income/assets in income chargeable to tax?
ii) What becomes 'definite information'?

Analysis: i) The question that looms large before us is whether before invoking the provisions of Section 122 of the "Ordinance", a separate notice to the taxpayer in terms of Section 111 of the "Ordinance" is pre-requisite to include unexplained income/assets in income chargeable to tax and without such notice substantial compliance of said provisions of law could be made or not and whether a notice under Section 122(9) of the "Ordinance" is enough to initiate proceedings for amendment of the assessment on the grounds mentioned in Section 111 of the "Ordinance"? The case of the applicant is that the Respondent-department was required to issue a separate notice under Section 111 of the "Ordinance" while the stance of the Respondents-department is that there is no need to issue a separate notice under the aforesaid section for proceeding under Section 122 of the "Ordinance". The issuance of a separate notice under Section 111 of the "Ordinance" has been held as mandatory for the purpose of addition on account of unexplained income or assets.
ii) So far as the question what becomes "definite information", has also been decided in above referred Civil Petition No.2447-L of 2022. Relevant part thereof reads as under: "Before an assessment can be amended under Section 122 on the basis of Section 111, the proceedings under Section 111(1) are to be initiated, the taxpayer is to be confronted with the information and the grounds applicable under Section 111(1) through a separate notice under the said provision, and then the proceedings are to be culminated through an appropriate order in the shape of an opinion of the Commissioner. This then becomes definite information for the purposes of Section 122(5), provided the grounds mentioned in Section 122(5) are applicable. The taxpayer is then to be confronted with these grounds through a notice under Section 122(9) and only then can an assessment be amended under Section 122.9 This view has also been recently taken by this Court in Bashir Ahmed wherein it has also been held that a notice under Section 111 can be simultaneously issued with a notice under Section 122(9), however, proceedings under Section 111 have to be finalized first in terms of an opinion of the

Commissioner so as to constitute definite information, as is required under Section 122(5) of the Ordinance".

Conclusion: i) Before invoking the provisions of Section 122 of Income Tax Ordinance, 2001, a separate notice to the taxpayer in terms of Section 111 of the Ordinance is pre-requisite to include unexplained income/assets in income chargeable to tax.
ii) See the above analysis clause no. ii.

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13. **Lahore High Court**
Mst. Rehmat Bibi through L.Rs. etc. v. Additional District Judge Gujranwala etc.
W.P. No. 31166 of 2017
Mr. Justice Shujaat Ali Khan.
https://sys.lhc.gov.pk/appjudgments/2024LHC1273.pdf

Facts: One of the respondents filed a suit for possession through pre-emption against predecessor-in-interest of petitioners, which was partially decreed in view of the compromise between the parties.The application under section 12(2) C.P.C., filed by the petitioners, challenging *vires* of said judgment & decree on the basis of fraud and misrepresentation, was dismissed against which they filed revision petition but the same was also dismissed; hence this petition.

Issues: i) What would be the consequences of reliance upon a death certificate without producing the *Nazim* or the Secretary Union Council concerned in witness box?
ii) What would be the effect of non-exercise of jurisdiction vested in the Civil Court?
iii) What general rule operates for weighing documentary evidence against oral evidence?
iv) Is it safe for the courts to rely upon the statement of a member of the Bar every time, while determining the fact in issue of the case?

Analysis: i) Mere the copy of death certificate on its face value is to be taken out of consideration for the reasons that neither the Secretary, Union Council concerned nor the *Nazim*, who put their signatures on the same, were brought into the witness-box to prove the contents of the said document. The production of document on record and its proof are two independent aspects and the latter aspect is vital, which makes a fact to be proved.
ii) The non-exercise of jurisdiction by a forum/Tribunal is relatable to the question of law. However, the forum/Tribunal seized with a proposition is free to form its opinion independently by exercising jurisdiction in a prescribed or settled manner.
iii) In general, documentary evidence takes precedence over oral evidence. Hence, it is not safe for the courts to hinge upon the testimony of a witness when the same is not corroborated by the relevant documentary evidence. However, in exceptional cases, documentary evidence cannot be relied upon without due

corroboration to believe, especially where entries in documents contradict each other.

iv) In ordinary circumstances, the statement of a member of the Bar vouching a fact is given due credence, but when such statement does not clinch the real controversy between the parties rather seems to be partial; same cannot be given precedence over the documentary evidence.

Conclusion: i) A death certificate, without producing the *Nazim* or the Secretary Union Council concerned in witness box, would not be considered authentic.

ii) Non-exercise of jurisdiction vested in the Civil Court results into grave miscarriage of justice.

iii) As a general rule, the documentary evidence outweighs the oral evidence but exceptions also exist.

iv) It is not safe every time for the courts to rely upon the statement of a member of the Bar, vouching a fact, when such statement does not clinch the real controversy between the parties rather seems to be partial, while determining the fact in issue of the case.

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14. **Lahore High Court**
Muhammad Ashraf and others v. Azhar Ahmad and others.
Civil Revision No.17685 of 2024
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1252.pdf

Facts: Through this Civil Revision the petitioners have challenged the validity of the judgment & decree passed by the Civil Judge whereby the suit for declaration and cancellation of mutations of the petitioners was dismissed and its appeal was also dismissed.

Issues: i) Whether submission of disputed documents through statement of counsel without oath can be appreciated in evidence?

ii) Whether one plaintiff can institute suit on behalf of other plaintiffs without specific authority or power of attorney?

iii) Whether concurrent findings on facts can be disturbed, when the same do not suffer from misreading and non-reading of evidence?

Analysis: i) It is evident from Ex.P2 and Ex.P3, which have also not been exhibited in the deposition of any of the witness rather the same have been brought on record in the statement of the learned counsel for the petitioner. The said documents being disputed one ought to have been brought on record either by the petitioner(s) or any of their witnesses while appearing in the witness box on oath so as to have been subject to cross examination. Submission of such disputed documents through statement of counsel without oath cannot be appreciated and cannot be considered in evidence...

ii) The suit was instituted by plaintiff only without any authority or power of attorney on behalf of the other plaintiffs/petitioners, so the suit to the extent of

other plaintiff was not maintainable, as per mandate of Order III, Rules 1 and 2, Code of Civil Procedure, 1908…Though the said lacuna was curable by producing the other plaintiffs before the learned trial Court (…)
iii) Concurrent findings on facts cannot be disturbed when the same do not suffer from misreading and non-reading of evidence, howsoever erroneous in exercise of revisional jurisdiction…

Conclusion: i) Submission of disputed documents through statement of counsel without oath cannot be appreciated in evidence.
ii) One plaintiff cannot institute suit on behalf of other plaintiffs without specific authority or power of attorney, however it can be curable through producing such plaintiff before court.
iii) Concurrent findings on facts cannot be disturbed, when the same do not suffer from misreading and non-reading of evidence.

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15. **Lahore High Court**
Muhammad Adil and others v.
Mst. Shamim Akhtar (deceased) through L.Rs.
Civil Revision No.17593 of 2024
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1258.pdf

Facts: The predecessor in interest of the respondents No.1 to 3 instituted a suit for possession through partition against the appellants and respondents No.4 & 5 wherein preliminary decree was passed and trial court appointed local commission. After report of local commissioner, the court appointed court auctioneer who after adopting auction procedure declared plaintiff no. 03 as successful bidder. The petitioners and one another filed objection petitions which were dismissed by trial court. The petitioner filed appeal but same was also dismissed; hence, instant Revision Petition.

Issues: i) Whether objection petition, filed regarding sale of immovable property in execution of a decree, is entertainable without deposit of fifty percent of successful bid amount?
ii) Whether decree holder can participate in auction proceedings?

Analysis: i) Under Order XXI Rule 90 of CPC, the objection petition filed regarding sale of immovable property in execution of decree can only be entertained if the petitioner deposits fifty percent of the sum realized at the sale, or furnishes such security as the Court may direct. In the instant case, the petitioner while filing objection petition did not deposit 50% of the successful bid amount; therefore, the objection petition on this score was not entertainable.
ii) In the light of Rule 72 Order XXI of CPC as substituted by Notification No.237/Legis/XI-Y-26 dated 22.08.2018, Lahore High Court Amendment, the holder of a decree (plaintiff) in execution of which the property is sold may participate in the auction of the property and make a bid…

Conclusion: i) Objection petition filed regarding sale of immovable property in execution of a decree is not entertainable without deposit of fifty percent of successful bid amount or furnishing of such security as the Court may direct.
ii) See under analysis no. 02.

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16. **Lahore High Court**
Mian Shabir Asmail v. Federation of Pakistan through Chief Secretary and others
Writ Petition No.2690 of 2024
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1242.pdf

Facts: Through the instant Constitutional Petition, the petitioner, contended that Section 232(2) of the Act, 2017 is unconstitutional as it cannot override the provisions of Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973.

Issue: Whether newly added section 232(2) of the Election Act, 2017 has overriding effect upon Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973?

Analysis: The newly added section 232(2) of the Election Act, 2017 has no overriding effect upon Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973, because the said provision of law does not provide disqualification for lifetime/permanent, therefore, the Courts including High Court and the Supreme Court are not supposed to rewrite any law, much less the Constitution, nor can insert anything therein. Under Article 189 of the Constitution, any decision of the Supreme Court, to the extent it decides a question of law or is based upon or enunciates a principle of law is binding on all other Courts in Pakistan including High Court. Therefore, it is held that section 232(2) of the Election Act, 2017, to the extent of 'period not exceeding five years from the declaration by the court of law in that regard' is not inconsistent with or in derogation of fundamental rights.

Conclusion: The newly added section 232(2) of the Election Act, 2017 has no overriding effect upon Article 62(1)(f) of the Constitution of Islamic Republic of Pakistan, 1973, because the said provision of law does not provide disqualification for lifetime/permanent.

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17. **Lahore High Court**
Azka Wahid v Province of Punjab & others
W.P No.32798 of 2023
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2024LHC1392.pdf

Facts: The petitioner through this Constitutional Petition has challenged the definition of child contained in the Child Marrige Restraint Act, 1929 (1929 Act) as amended and substituted by the Punjab Child Marriage Restraint (Amendment) Act, 2015.

In particular, section 2(a) and (b) of the 1929 Act, on the ground that they offend the equality clause in the Constitution of the Islamic Republic of Pakistan, 1973, and sought the above mentioned provisions be declared unconstitutional.

Issues: i) Whether medical science supports the notion of a female attaining puberty at an age which materially differs from a male?
ii) Whether notwithstanding the appearance of signs of puberty differently in males and females, the Government is empowered to prescribe a minimum age for marriage or not?
iii) Whether the Government is empowered to put a restraint on child marriage?
iv) Whether the purpose of law is anchored primarily in social economic and educational factors rather than religious?
v) Whether the Article 35 of the Constitution of the principle of policy obliges the State to protect marriage, the family, the mother and the child?
vi) Whether in view of Article 25 of the Constitution, the discrimination on the basis of sex is permissible?

Analysis: i) Doubtless, medical science, too, supports the notion of a female attaining puberty at an age which materially differs from a male. But that does not necessarily lead to granting a license in the hands of a parent or guardian to marry off a female child.
ii) For, that is what the 1929 Act seeks to achieve. If this were not the case, the definition of child would have had relation to age of puberty and not ages determined reflexively or randomly. Otherwise there are no manageable standards for assigning ages of sixteen and eighteen for female and male respectively. There is no prohibition in the constitution on prescribing a minimum threshold for marriage and therefore to criminalise child marriage. The theme of the 1929 Act is to restrain the solemnization of child marriage. That purpose has been muddled by providing different ages for males and females for which there is no intelligible criteria. There may be a myriad of factors considered by the legislature while enacting the law.
iii) There are formidable reasons to compel a Government to put a restraint on child marriage. It makes a compelling case based on physiological and sociological factors for the executive to step up and take effective measures to counter the debilitating effect of child marriage. It was a data-driven exercise based on pragmatic considerations to ensure a healthy society. It is an attempt to tap into the potential of more than half the population and pivots the mother to the centre of the debate. To the above, population control may also be added.
iv) The purpose of law is anchored primarily in social economic and educational factors rather than religious. We, as a nation, woefully lag behind in all major indicators and half of our population cannot be lost to child-bearing at an early age while its potential remains untapped. Equal opportunities for females means equal restraint on marriage as the males. It is thus a fallacy to assume that the discourse is coloured by some underlying notions unrelated to the real purpose

that permeates the law of child marriage.

v) The Article 35 of the Constitution of the principle of policy obliges the State to protect marriage, the family, the mother and the child. The 1929 Act (and its amendments) is a step towards fulfilment of duty by the State under Article 35. It specifically mentions the mother and not the father. It is of crucial importance to protect marriage, the family, the mother and the child to put a restraint on child marriage yet the centre of the family, the mother, has been grossly discriminated which undermines the cogency of the constitutional scheme. It is essential for the protection of family with the mother and the child as its more important elements to protect a female from being subjected to child marriage. The mandate of Article 35 was not lost on the legislature while enacting the 1929 Act. But, for some reason which cannot be discerned, unmistakable partisan slant has muddled the clear stream of policy objectives animating the 2015 amendments. The difference in ages in the definition of child was left unchanged in the 2015 amendments.

vi) In view of Article 25 of the constitution, there shall no discrimination on the basis of sex, and the state is only permitted to make special provision for the protection of women and children. The definition of child in the 1929 Act while making a distinction on the basis of age is not based on an intelligible criteria having nexus with the object of the law. The definition is indeed a special provision for the protection of women but in the process it tends to afford greater protection to males by keeping their age of marriage higher than females. Clause (3) of Article 25 is an instance of affirmative action, a concept of American constitutional law and introduced in our constitution through this provision. The definition of child, in its present form, in 1929 Act is discriminatory.

Conclusion:

i) Doubtless, medical science, too, supports the notion of a female attaining puberty at an age which materially differs from a male.

ii) There is no prohibition in the constitution on prescribing a minimum threshold for marriage and therefore to criminalise child marriage.

iii) There are formidable reasons to compel a Government to put a restraint on child marriage.

iv) The purpose of law is anchored primarily in social economic and educational factors rather than religious.

v) The Article 35 of the Constitution of the principle of policy obliges the State to protect marriage, the family, the mother and the child.

vi) In view of Article 25 of the constitution, there shall no discrimination on the basis of sex.

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18. **Lahore High Court**
Chaklala Cantonment Board v. M/s Umar Khan and others.
Civil Revision No.1004 of 2015
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC1359.pdf

Facts: Respondent was owner of the land within the limits of Cantonment Board. Out of the said land, some portion of land was utilized by the petitioner-Board for construction of Road through its resolution. The owner of the land/"respondent" was, however, assured that he shall be provided alternate land for the land utilized in the road. On failure by the petitioner-Board to fulfill the commitment, the "respondent" instituted a suit for specific performance, possession and recovery of compensation. The suit was decreed. The petitioner-Board challenged the judgment and decree of the trial court up to the Supreme Court of Pakistan but remained unsuccessful. This followed the execution proceedings wherein the petitioner-Board filed an objection petition but it was dismissed. Feeling aggrieved, the petitioner-Board preferred an appeal but the appeal was also dismissed, hence this petition.

Issues: i) When the revisional jurisdiction under Section 115 of "CPC can be invoked?
ii) What are the underlying principles and objectives behind imposing costs in frivolous and vexatious litigation and promote fair trial under Article 10A of the Constitution?

Analysis: i) Revisional jurisdiction under Section 115 of "CPC" can only be invoked in the eventualities mentioned in the said provision of law. It cannot be resorted to in an omnibus fashion.

ii) Such frivolous, vexatious and speculative litigation unduly burdens the courts giving artificial rise to pendency of cases which in turn clogs the justice system and delays the resolution of genuine disputes. Such litigation is required to be rooted out of the system and one of the ways to curb such practice of instituting frivolous and vexatious cases is by imposing of costs under Order XXVIII, Rule 3 of the Supreme Court Rules, 1980 ("Rules"). The spectre of being made liable to pay actual costs should be such as to make every litigant think twice before putting forth a vexatious claim or defence before the Court. These costs in an appropriate case can be over and above the nominal costs which include costs of the time spent by the successful party, the transportation and lodging, if any, or any other incidental cost, besides the amount of the court fee, process fee and lawyer's fee paid in relation to the litigation. Imposition of costs in frivilous and vexatious cases meets the requirement of fair trial under Article 10A of the Constitution, as it not only discourages frivilous claims or defences brought to the court house but also absence of such cases allows more court time for the adjudication of genuine claims. It also incentivizes the litigants to adopt alternative dispute resolution (ADR) processes and arrive at a settlement rather than rushing to courts. Costs lay the foundation for expeditious justice and promote a smart legal system that enhances access to justice by entertaining genuine claims. The purpose of awarding costs at one level is to compensate the successful party for the expenses incurred to which he has been subjected and at another level to be an effective tool to purge the legal system of frivolous, vexatious and speculative claims and defences. In a nutshell costs enourage

alternative dispute resolution; settlements between the parties; and reduces unnecessary burden off the courts, so that they can attend to genuine claims. Costs are a weapon of offence for the plaintiff with a just claim to present and a shield to the defendant who has been unfairly brought into court.

Conclusions: i) Revisional jurisdiction can only be invoked in the eventualities mentioned in Section 115 of "CPC". It cannot be resorted to in an omnibus fashion.
ii) Costs lay the foundation for expeditious justice and promote a smart legal system that enhances access to justice by entertaining genuine claims. The imposition of costs aligns with the principles of fair trial under Article 10A of the Constitution as well.

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19. **Lahore High Court**
Khawaja Javed Mehmood v. Punjab Small Industries Corporation through Regional Director Rawalpindi and 2 Others
Civil Revision No.33-D of 2022
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC1349.pdf

Facts: The Punjab Small Industries Corporation allotted a commercial plot to the petitioner and handed him over possession of the same after payment of sale price whereof he established a garments factory at spot. Later, the respondent-Corporation issued a letter to the petitioner asking him to pay the sale price at the rate of Rs.1,00,000/- per *Kanal* instead of earlier agreed and settled rate Rs.52,000/- per *Kanal*, whereupon the petitioner instituted a suit for declaration, permanent and mandatory injunction which was dismissed. The petitioner preferred an appeal but it was also dismissed, hence this petition under Section 115 of the Code of Civil Procedure (V of 1908).

Issues: i) What is difference between the relevancy and admissibility of the documentary evidence?
ii) What is effect of not following the prescribed modes to prove a document?
iii) What is consequence of the omission to object as to inadmissibility of a document and as to the mode of proving contents of a document or its execution at the appropriate stage?
iv) At what stage(s) the objection of "mode of proof" and the objection of "absence of proof" may be raised?

Analysis: i) Unlike "relevance", which is factual and determined solely by reference to the logical relationship between the fact claimed to be relevant and the fact-in-issue, "admissibility" is a matter of law. As far as the admissibility relating to documents is concerned, admissibility is of two types: (i) admissible subject to proof, and (ii) admissible per se, that is, when the document is admitted in evidence without requiring proof.Thus, a "relevant" fact would be "admissible" unless it is excluded from being admitted, or is required to be proved in a

particular mode(s) before it can be admitted as evidence, by the provisions of the *Qanun-e-Shahadat* Order, 1984.

ii) Mode of proof is the procedure by which the "relevant" and "admissible" facts have to be proved, the manner whereof has been prescribed in Articles 70-89 of the *Qanun-e-Shahadat* Order, 1984. Article 78 of the Order ibid is akin to Section 67 of the Evidence Act, 1872 which lays down the mode of proof of execution of document. In this regard, the foundational principle governing proof of contents of documents is that the same are to be proved by producing "primary evidence" or "secondary evidence".

iii) As a general principle, an objection as to inadmissibility of a document can be raised at any stage of the case, even if it had not been taken when the document was tendered in evidence. However, the objection as to the mode of proving contents of a document or its execution is to be taken, when a particular mode is adopted by the party at the evidence-recording stage during trial. The latter kind of objection cannot be allowed to be raised, for the first time, at any subsequent stage. This principle is based on the rule of fair play.

iv) When the *Qanun-e-Shahadat* Order, 1984 provides several modes of proving a relevant fact and a party adopts a particular mode that is permissible only in certain circumstances, the failure to take objection when that mode is adopted estops the opposing party to raise, at a subsequent stage, the objection to the mode of proof adopted. However, when the Order ibid provides only one mode of proving a relevant fact and that mode is not adopted, or when it provides several modes of proving a relevant fact and none of them is adopted, such a case falls within the purview of "absence of proof", and not "mode of proof"; therefore, the objection thereto can be taken at any stage, even if it has not earlier been taken.

Conclusion: i) A fact is "relevant" if it is logically probative or dis-probative of the fact-in-issue, which requires proof. On the other hand, a fact is "admissible" if it is relevant and not excluded by any exclusionary provision, express or implied.

ii) A document would not be admissible if same is brought on the record without adhering mandatory provisions prescribed to prove a document.

iii) The omission to object at the appropriate stage becomes fatal.

iv) “Absence of proof” goes to the very root of admissibility of the document as a piece of evidence; therefore, this objection can be raised at any stage, However, the objection as to "mode of proof" can only be taken when that mode is adopted.

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20. **Lahore High Court**
Allah Bakhsh (deceased) through his legal heirs etc. v. Muhammad Hanif (deceased) through his legal heirs etc.
Civil Revision No.377-D/2003
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2024LHC1294.pdf

Facts: Through this Civil Revision, the petitioners have challenged the validity of judgment & decree passed by the learned Additional District Judge whereby the

appeal of the respondents was accepted, the judgment & decree passed by the learned Civil Judge was set aside and the suit for declaration filed by the respondents was decreed.

Issues: i) Whether Shamlat has been presumed to be alienated if it has not specifically been mentioned in the registered sale deed?
ii) Whether civil court has jurisdiction to decide a matter relating to change in entry in revenue record during consolidation proceedings?

Analysis: i) As per Section 3 of West Pakistan Dispositions (Saving of Shamilat) Ordinance, 1959, Shamlat cannot be presumed as transferred unless specifically mentioned in the instrument of disposition. Under Para 7.19 of the Land Records Manual it is necessary to show in the mutation whether such transfer of land includes the shares of the Shamlat. So, Shamlat will not be presumed to be alienated if it has not specifically been mentioned in the registered sale deed.
ii) When the Consolidation Authorities, in appeal and revision, has categorically advised the party to approach Civil Court for correction of entries in the revenue record and every new entry in revenue record creates fresh cause of action, then civil court has jurisdiction to decide a matter relating to change in entry in revenue record during consolidation proceedings.

Conclusion: i) Shamlat will not be presumed to be alienated if it has not specifically been mentioned in the registered sale deed.
ii) Civil court has jurisdiction to decide a matter relating to change in entry in revenue record during consolidation proceedings as every new entry in revenue record creates fresh cause of action.

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21. **Lahore High Court**
Imdad Ullah v. The State and another
Criminal Appeal No. 448/2022
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2024LHC1462.pdf

Facts: The appellant was convicted by the trial court in case FIR for an offence under section 377-B PPC and sentenced with rigorous imprisonment for fourteen years with a fine of Rs.1,000,000/- .

Issues: i) Whether the delay in making a report to the police regarding an incident of child sexual abuse can be considered as material?
ii) Whether the *voir dire test* is mandatory to assess the competency of a child witness and whether his testimony is inadmissible without it?
iii) Whether an individual can be convicted on the basis of solitary uncorroborated testimony of a child who is a victim of sexual abuse?
iv) Whether hearsay evidence from a child victim of sexual abuse is legally admissible?

Analysis: i) While the law generally encourages prompt reporting of crimes, courts recognize that child abuse is a sensitive issue. Several factors can contribute to delays in reporting child sexual abuse, including fear, shame, threats from the perpetrator, or a lack of awareness. Hence, the courts in our country do not consider the delay in making a report to the police material unless the circumstances are such that they warrant an adverse view. The legal system aims to balance the need to protect children from abuse with the principles of fairness and due process.

ii) In Pakistan, the competency of a witness is determined under Articles 3 and 17 of the Qanun-e-Shahadat, 1984 ("QSO"), while the credibility of a witness is a question of fact which the court decides following the principles settled for the appraisal of evidence. Article 3 of the QSO does not explicitly specify any particular age qualification for a witness….Under Article 3 of the QSO, a child is competent to be a witness if he possesses the capacity and intelligence to understand and respond rationally to questions – a criterion known as the "*voir dire test.*" In certain jurisdictions, specific guidelines and procedures exist for evaluating a child's competency to testify….Analysis of the [Pakistani and Indian] cases shows that the essential requirement for a child, or any individual, to appear and testify as a witness is that they should have the ability and intelligence to comprehend the posed questions and furnish coherent responses. There is a preponderance of opinion that the testimony of a child witness cannot be discarded merely because the trial judge did not carry out a *voir dire* test. Although it is advisable for the trial judge to meticulously document the questions and corresponding answers to ensure that the child understands the duty to speak the truth, the lack of such documentation or the trial judge's omission to opine on the child's competency does not render the testimony inadmissible.

iii) Child abuse is one of the most challenging crimes to detect and prosecute primarily because there often are no witnesses except the victim. It becomes more difficult when the perpetrator is a parent or a close family member. The child may feel afraid, burdened by guilt, and may be hesitant to disclose the abuse to others. Due to these complexities, the courts deal with these cases with extra care and special attention….the evaluation of a child's testimony as a victim of sexual abuse requires a thorough and balanced approach to ensure the protection of their rights and interests while upholding principles of justice. The absence of corroboration should not automatically discredit the child's testimony in such cases. The tender age of the child, combined with other case-specific circumstances, such as demeanour and the unlikelihood of tutoring, may make corroboration unnecessary. However, this is a factual consideration in each case. Courts must acknowledge that children may respond to the trauma of abuse in diverse ways, which may include confusion, fear, or emotional distress….It is crucial to emphasize that the sexual abuse of a child can take the form of penetrative or non-penetrative acts. Non- penetrative cases pose more significant challenges, especially in our societal context, because this category has a heightened risk of false accusations. Judges must determine the guilt or

innocence of an accused by thoroughly examining all available evidence, considering the surrounding circumstances, and adhering to applicable legal standards. Although a conviction based on the uncorroborated testimony of a child victim of sexual abuse is legally possible, its viability depends on the circumstances of the case and the strength of the child's testimony.

iv) *Wigmore on Evidence* enumerates 14 exceptions to the hearsay rule. Out of them, a few are more widely employed. These include: dying declarations, statements of facts against interest, and spontaneous exclamations…Courts sometimes apply time limitations to spontaneous exclamations, which is incorrect and causes confusion. Such limitationsshould only be applied to verbal acts. The real test in spontaneous exclamations is not when the exclamation was made but whether the speaker can be deemed to be expressing themselves under the stress of nervous excitement and shock produced by the act in question…in instances of sexual abuse involving a young child, the primary evidence very often consists of statements made by the child to a third party. Usually, these statements do not meet the criteria for admission under the conventional exceptions to the hearsay rule. Faced with this situation, courts have increasingly opted to relax the admissibility standards for statements made by children regarding sexual abuse to others. In some jurisdictions, courts have done this by making adjustments within the framework of the spontaneous declarations doctrine. However, some commentators have expressed disapproval of this approach…The shortcomings inherent in a rigid application of the spontaneous exclamation exception to hearsay statements from child victims in cases of sexual abuse have led to the emergence of the "tender years exception." It is designed explicitly for out-of-court statements made by child victims of sexual crimes. Although the tender years exception is sometimes considered a variation of the spontaneous exclamation exception, it differs significantly. The requirement of contemporaneity is eliminated. This exception allows for the admission of statements from young victims regardless of the time elapsed between the assault and the statement, provided that the delay is adequately explained. The underlying rationale seems to be the assumption that the child is under continuous duress throughout the entire period. Notably, the tender years exception permits the introduction of hearsay only to corroborate the child's in-court testimony.

Conclusion: i) The delay in making a report to the police regarding an incident of child sexual abuse cannot be considered as material unless the circumstances are such that they warrant an adverse view.

ii) The *voir dire test* is not mandatory to assess the competency of a child witness and the testimony of child witness cannot be held to be inadmissible on this sole ground.

iii) An individual can be convicted on the basis of solitary uncorroborated testimony of a child who is a victim of sexual abuse.

iv) Hearsay evidence from a child victim of sexual abuse is legally admissible.

22. **Lahore High Court**
Musawar Hussain v. The State and another.
Crl. Misc. No. 67328/B/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC7735.pdf

Facts: Through this application, the Petitioner seeks pre-arrest bail in case in which FIR was initially registered for an offence under section 365-B PPC but during investigation sections 420, 468 & 471 PPC were added.

Issues: i) Is it permissible for an individual to marry two real sisters concurrently?
ii) What are the classes of women with whom marriage is prohibited?
iii) Define categories of marriage in islam?
iv) Can an individual marry the sister of his divorced wife while the latter is undergoing the Iddat period?
v) What are the several methods through which talaq can be affected in Islam?
vi) If during the investigation, it turns out that a non-cognizable offence, rather than a cognizable offence, had been committed, whether it invalidate the proceedings?
vii) Whether a person who marries the sister of his divorced wife while she is in the Iddat period can enter a new marriage contract with that woman after his ex-wife‟s Iddat period ends?

Analysis: i) There is a consensus amongst Muslim jurists that the conjunction of two sisters is Haram, one of the gravest sins. However, there is a difference of opinion on whether such marriage is batil or fasid. The majority of the Hanafi jurists lean towards categorizing it as fasid (…) In summary, the differentiation between batil and fasid marriages carries substantial legal consequences, both civil and criminal. Civil liabilities are not an issue in the present case, so they shall be discussed in some other proceedings. Regarding criminal liability arising out of a marriage involving the marriage of two sisters, most Hanafi jurists, including Imam Abu Hanifa (R.A), argue that such unions do not warrant the imposition of Hadd punishment. However, they are unanimous that considering its serious repercussions, it must be dealt with seriously, and Tazir must be inflicted.
ii) The Holy Quran delineates specific restrictions on marriage, particularly concerning certain categories of women. In Iftikhar Nazir Ahmad Khan and others v. Ghulam Kibria and others (PLD 1968 Lahore 587), Muhammad Akram J. identified nineteen classes of women with whom marriage is prohibited.1 These prohibitions, known as “Moharramat”, encompass various familial and social relationships, ranging from mothers and daughters to married women and idolaters. Such restrictions aim to preserve domestic harmony, prevent conflicts, and uphold moral integrity within the Muslim community. Importantly, these prohibitions are classified into two categories: perpetual and temporary. Perpetual prohibitions arising from consanguinity, fosterage, and affinity are absolute and eternal, leaving no room for exceptions. Conversely, temporary prohibitions arise

from impediments that are not permanent, allowing for the potential removal of obstacles to marriage.2 The temporary prohibitions are against (i) exceeding the number of wives allowed by law, (ii) conjunction of two sisters, (iii) conjunction of a free woman and a slave girl, (iv) marriage with an idolatress, (v) marriage with another‟s wife, (vi) marriage with another‟s Moattada (in the Iddat of another); (vii) conjunction of two such females as could not have intermarried, if one of them was a male..

iii) The Hanafi jurists delineate marriages into three distinct categories: Saheeh, fasid, and batil – depending upon their validity and effect. Saheeh is commonly translated as "valid", while fasid is interpreted as "invalid" or "irregular", and batil as "void". These terms carry nuanced meanings in Islamic jurisprudence that transcend simplistic English translations. Therefore, using the original Islamic terminology whenever possible is advisable, as relying solely on translations may lead to misunderstandings, especially regarding the term fasid. "Irregular" suggests some procedural flaw, "which does not fit within the scheme of Islamic law and jurisprudence. Fasid cannot be equated with mere irregularity as employed and used under the common law."The distinction between the above-mentioned classifications is crucial because it determines the legal status and consequences of matrimonial unions under Hanafi law. A Saheeh marriage is free from all defects. It impeccably conforms with all the requirements laid down by the Shariah, e.g., the existence of the proposal and acceptance, the presence of the witnesses, and the competency of the parties involved. Such marriages yield lawful and binding consequences for the parties involved. Conversely, batil marriages are those which are deemed void from their inception due to fundamental defects. These marriages lack essential elements required by Shariah, rendering the proposal and acceptance devoid of legal effect. Consequently, batil marriages are unlawful unions which fail to produce any legal consequences. Situated between these two extremes are fasid marriages, characterized by defects that compromise their validity to a certain extent.It is easy to classify marriages as Saheeh, batil, and fasid in terms of their definitions, but their practical application poses serious challenges. Muhammad Akram J. observes that some Hanafi jurists have conflated the concepts of fasid and batil marriages, using these terms interchangeably. However, recent authors have diligently recognized and preserved their precise technical meanings in legal discourse.Since there is a clear distinction between batil and fasid marriages in Islamic jurisprudence, it is necessary to delve into the rights and obligations of the parties involved. Before consummation, both batil and fasid marriages are considered nugatory and have no legal effect. In the case of a fasid marriage, the absence of consummation means that there is no requirement for Iddat for the woman, nor is she entitled to the dower. However, certain legal consequences ensue once consummation occurs. The woman is obligated to observe Iddat following the dissolution of the marriage. Furthermore, she is entitled to the customary or the specified dower, whichever is less, and Nasab (paternity) is established if a child is born to the couple. While there is no Hadd (the specific punishment for Zina) for engaging in

a fasid marriage, the parties involved may still face the consequences under Tazir, a discretionary sentence imposed by the Qazi. The severity of Tazir is contingent upon the circumstances of each case, serving as a corrective measure to deter future transgressions and uphold societal norms. The parties to a fasid marriage are under a liability to separate as soon as Fasad (illegality) appears or becomes known to them. If they do not, it is the Qazi‟s responsibility to separate them and dissolve their marriage immediately.

iv) It is a well-established principle of Islamic jurisprudence that Talaq is not effective until the expiration of Iddat (…) The prohibition against expelling the woman during the Iddat by the husband and the explicit restriction on the woman leaving her husband‟s house herself during this period indicate that after the pronouncement of Talaq, where the marriage has been consummated, the woman remains bound by the marital contract until the prescribed Iddat period specified by the Quran and Sunnah has lapsed. This is also why the woman is entitled to maintenance during this period. Additionally, if either spouse passes away before the completion of the Iddat period, the surviving spouse is entitled to inherit from the deceased‟s estate. As a result, jurists have a consensus that a person cannot marry his ex-wife‟s sister until her Iddat period has ended.

v) In Islam, a Talaq can be effected through several methods, each having its own conditions and procedures. According to D.F. Mulla's Principles of Mahomedan Law, the first method, Talaq Ahsan, involves a single pronouncement of divorce made during a Tuhr, which is the period between menstruations. After this pronouncement, there must be a period of abstinence from sexual intercourse for the duration of the Iddat, or waiting period. Talaq Ahsan can still be pronounced if the marriage has not been consummated, even if the wife is menstruating. However, if the wife has reached menopause, the requirement of pronouncement during a Tuhr does not apply. Additionally, this requirement only pertains to oral divorce, not written divorce. The second method, Talaq Hasan, requires three pronouncements made during successive Tuhrs, with no sexual intercourse occurring during any of the three Tuhrs. The first pronouncement must occur during one Tuhr, the second during the next Tuhr, and the third during the Tuhr following that. Finally, Talaq-ul- Bidaat or Talaq-i-Badai, the third method, involves either three pronouncements made during a single Tuhr, either in one sentence or separately, or a single pronouncement during a Tuhr that clearly indicates an irrevocable intention to dissolve the marriage. Examples include pronouncing "I divorce thee thrice" or "I divorce thee irrevocably."(…) Section 7(3) of the Muslim Family Laws Ordinance, 1961 is based on the same principle. It stipulates that unless revoked earlier, expressly or otherwise, Talaq shall not be effective until ninety days12 have elapsed from the day on which notice under section 7(1) is delivered to the Chairman of the Union Council.13 If the wife is pregnant when Talaq is pronounced, it shall not be effective until the period mentioned above expires or the pregnancy ends, whichever is later.

vi) It is well established that when a person approaches the officer in-charge of a

police station to register an FIR, the determining factor for him is whether the information laid before him pertains to the commission of a cognizable offence. If, during the investigation, it turns out that a non-cognizable offence, rather than a cognizable offence, had been committed, it does not invalidate the proceedings, as the provisions of section 155 Cr.P.C. do not apply.

vii) If, contrary to Shariah law, a person marries the sister of his divorced wife while she is in the Iddat period, there is no bar on him entering into a new marriage contract with that woman after his ex-wife‟s Iddat period ends.

Conclusions: i) According to Muslim jurists, the conjunction of two sisters is Haram, one of the gravest sins and it must be dealt with seriously, and tazir must be inflicted.

ii) There are nineteen classes of women with whom marriage is prohibited and these prohibitions, known as “Moharramat” and these prohibitions are further classified into two categories: perpetual and temporary. Perpetual prohibitions arising from consanguinity, fosterage, and affinity are absolute and eternal, leaving no room for exceptions. Conversely, temporary prohibitions arise from impediments that are not permanent, allowing for the potential removal of obstacles to marriage.

iii) The Hanafi jurists delineate marriages into three distinct categories: Saheeh, fasid, and batil – depending upon their validity and effect. Saheeh is commonly translated as “valid”, while fasid is interpreted as “invalid” or “irregular”, and batil as “void”.

iv) It is a well-established principle of Islamic jurisprudence that Talaq is not effective until the expiration of Iddat, therefore, a person cannot marry his ex-wife‟s sister until her Iddat period has ended.

v) See analysis no. v.

vi) If, during the investigation, it turns out that a non-cognizable offence, rather than a cognizable offence, had been committed, it does not invalidate the proceedings, as the provisions of section 155 Cr.P.C. do not apply.

vii) If, contrary to Shariah law, a person marries the sister of his divorced wife while she is in the Iddat period, there is no bar on him entering a new marriage contract with that woman after his ex-wife‟s Iddat period ends.

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23. **Lahore High Court**
Muhammad Waseem v. The State and another
Crl. Appeal No.20219/2023
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2024LHC1346.pdf

Facts: The applicant/convict filed a miscellaneous application seeking suspension of execution of sentence awarded to him by trial court in complaint case in case arising out of F.I.R. registered under Sections: 302, 452, 148, 149 PPC etc.

Issue: Whether conviction and sentence of an accused can be maintained on the same evidence, on the basis of which the co-accused have been acquitted with the same and similar role?

Analysis: …conviction recorded and sentence awarded to the present applicant needs reappraisal of evidence; in this regard, guidance has been sought from the case of "SOBA KHAN Versus The STATE and another" (2016 SCMR 1325) and relevant portion from the same is reproduced: -*"17. It is by now well settled principle of law relating to reappraisal of evidence that once co-accused, similarly charged and attributed same and similar role in a particular crime, is acquitted on the basis of same set of evidence where the witnesses have maintained no regard for truth while deposing on oath to tell the truth and nothing else then, ordinarily they shall not be relied upon with regard to the other co-accused unless their testimony/evidence is strongly corroborated by independent cogent and convincing evidence."*

Conclusion: Conviction and sentence of an accused cannot be maintained on the same evidence, on the basis of which the co-accused have been acquitted with the same and similar role unless the evidence is strongly corroborated by independent cogent and convincing evidence.

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24. **Lahore High Court**
Province of Punjab, etc. v. Muhammad Yousaf
Civil Revision No.414-D of 2012
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC1262.pdf

Facts: Through this Civil Revision filed u/s 115 of Code of Civil Procedure, 1908, petitioners assailed the validity and legality of judgment & decree whereby the learned Appellate Court while accepting the appeal of the respondent set-aside the judgment & decree passed by the learned Trial Court and decreed his suit.

Issues: i) Whether the Additional Commissioner and Member, Board of Revenue could resume the land on the ground that the suit land had come within the prohibited zone?
ii) Whether a second review is permissible under the West Pakistan Board of Revenue Act?
iii) What is the nature of remedy of review and whether the same can be exercised by the authority when the same is not provided under the law?

Analysis: i) There is no cavil with the proposition that land falling within the prohibited zone is immune from allotment under any scheme. Said allotment could not be cancelled, because once the land was made available for allotment, it was transferred and settled on the respondent, it would supersede all the notifications imposing such prohibitions. Under the law, the presumption is that acts done by the statutory functionaries were done in good faith and in a lawful manner, according to law applicable at that time. Under the principle of locus potentiae, the petitioners were not justified to act in the complained manner to cancel the land of the respondent. The question as to whether a piece of land falls within a

prohibited zone is to be determined from the date of allotment and not from the time of grant of proprietary rights. The petitioners failed to bring on record any evidence to establish that at the time of allotment or at the time of resumption the land was falling within a prohibited zone.

ii) Under Section 08 of the West Pakistan Board of Revenue Act (XI of 1957), the power of review was available which was exercised by Board of Revenue while passing the order in the first review. Further review of the order passed in review could not have been done by the Board of Revenue in the absence of any such power to vest in the Board by law. The Board of Revenue exceeded its jurisdiction by passing orders in question in an ostensible exercise of the power of review to vest in it. No power to review an order passed on a review petition by the Board of Revenue was available. As no power of second review was available under the law, the exercise of any such jurisdiction was without lawful authority and non-est.

iii) It is well-settled that the right of review is a substantive right and is always a creation of the relevant statute on the subject. The power of review being a statutory remedy cannot be assumed by an authority in the absence of a clear-cut provision in this regard. Similarly, a second review does not exist if not created or granted by a statute. After the final disposal of the first application for review, no subsequent review including the "curative review" shall lie.

Conclusions: i) No. Land falling within the prohibited zone is immune from allotment under any scheme but said allotment could not be cancelled, because once the land was made available for allotment, it was transferred and settled on the respondent, it would supersede all the notifications imposing such prohibitions.

ii) No power to review an order passed on a review petition by the Board of Revenue is available under West Pakistan Board of Revenue Act.

ii) The right of review is a substantive right and is always a creation of the relevant statute on the subject. The power of review being a statutory remedy cannot be assumed by an authority in the absence of a clear-cut provision in this regard.

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25. **Lahore High Court**
Rozina Ahmed v. Province of Punjab, etc.
Writ Petition No. 1287 of 2023
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC1233.pdf

Facts: Through this Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has called in question the vires of orders passed by the respondent-authorities.

Issues: i) What is meaning of the term "provisional"?
ii) What is nature of a provisional document and for what time the same is issued?
iii) Whether an authority through an order once creating a right in favor of the beneficiary of that order can subsequently recall the same?

Analysis: i) In order to proceed further, firstly it is better to understand the meaning of 'Provisional'. In this respect, guidance has been sought from the renowned dictionaries. The gist of which is reproduced below:-The Black's Law Dictionary defines the word 'Provisional' as under: 'Provisional': Temporary <a provisional injunction>. 2. Conditional. The Cambridge Advanced Learner's Dictionary defines the word 'Provisional' as under: 'Provisional': For the present time but likely to change, temporary. The Longman Dictionary of Contemporary English defines the word 'Provisional' as under: 'Provisional': 1. Intended to exist for only a short time and likely to be changed in the future. The Concise Orford Thesaurus defines the word 'Provisional' as under: 'Provisional': Interim, temporary, pro tem; transitional, changeover, stopgap, short-term, fill-in, acting, caretaker, subject to confirmation, penciled in, working, tentative, contingent. The Oxford English Urdu Dictionary defines the word 'Provisional' as under: صرف فوری۔ ضرورت کے لیے؛ عارضی

ii) Provisional document is issued only for the time being which is always temporary in nature and likely to vary in future.

iii) It was held in the said order that "if any right is created by the act of the Appointing Authority and rule of locus poenitentiae in favour of the employees of either side, they be treated in the light of judgments of august Supreme Court of Pakistan reported as Executive District Officer (Edu), Rawalpindi and others Versus Mst. Rizwan Kausar and 4 others (2011 SCMR 1581), Collector of Customs and Central Excise Peshawar and 2 others Versus Abdul Waheed and 2 others (2004 SCMR 303) and Muhammad Shoaib and 2 others Versus Government of N.W.F.P. through The Collector, D.I. Khan and others (2005 SCMR 85).'The august Supreme Court of Pakistan in its judgment reported as Mst. Basharat Jehan v. Director General, Federal Government Education, FGEI (C/Q) Rawilpindi and others (2015 SCMR 1418) observed as under:-"Once a right is accrued to the appellant by appointment letters issued after complying with all the codal formalities could not be taken away on mere assumption and or supposition and or whims and fancy of any executive functionary. Such right once vests, cannot be destroyed or withdrawn as legal bar would come into play under the well doctrine of locus poenitentiae, well recognized and entrenched in our jurisprudence.

Conclusions: i) See analysis portion No.i

ii) Provisional documents are issued only for the time being, which is always temporary in nature and likely to vary in future.

iii) Once a right has been created by a competent authority in favor of the beneficiary the same cannot be recalled under the principle of "locus poenitentiae".

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26. **Lahore High Court**
Muhammad Siddique. v Rabia Rafique, etc.
Civil Miscellaneous No.07-C of 2023/BWP.
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC1315.pdf

Facts: The trial court partially decreed the suit of applicant no.2, and decreed the suit in toto of respondent no.1. Applicant no.2, filed appeal before appellate court which was dismissed, his revision petition before the High Court was dismissed, his special leave to appeal as well as review petition was also dismissed by the Supreme Court of Pakistan. Now, the applicant no.1 and applicant no.2 have filed the separate petitions under section 12(2) of C.P.C, to assail the judgment of revision petition which was passed by the High Court.

Issues: i) Whether the certificate of effectiveness of divorce from union council is necessary in case of divorce obtained on the basis of khula through the decree of court?
ii) Whether the dissolution of marriage of khula is ineffective if the wife has not returned the benefits for the consideration of khula?
iii) Whether a person can be compelled to give a sample for DNA testing?
iv) What are the requirements for application of the provisions of section 12(2) of C.P.C.?
v) Whether the court may dispose of an application under section 12(2) of C.P.C, without framing of issues, recording of evidence and following the procedure for trial of the suit?
vi) Whether the court is under obligation to frame issues in case of application filed under section 12(2) of C.P.C.?
vii) Whether a litigant can be allowed to avail other remedy if he has availed the one remedy earlier?

Analysis: i) Dissolution of marriage under the Family Courts Act, 1964 once having attained finality does not make it ineffective merely on the ground that notice of decree for dissolution of marriage was not given and certificate of effectiveness of said divorce was not issued by the concerned Union Council. If it is presumed that a wife failed to give notice of the decree of dissolution of marriage, then it related to the question of contravention of the provision of Sub-section 01 of Section 07 of Muslim Family Laws Ordinance 1961. Sub- section 02 of Section 07 provides that whosoever contravenes the provisions shall be sentenced to imprisonment for a term which may extend to one year or with a fine which may extend to 5000 rupees or with both. It is crystal clear that non sending of a copy of decree after obtaining Khula from the Court under Sub-Section 01 of Section 07 or failure to obtain the certificate can at the maximum entail penal consequences but cannot invalidate the decree of dissolution of marriage on the basis of Khula.
ii) Where marriage was dissolved by way of Khula imposing a condition on wife first to return the benefits of husband to him, non-fulfillment of that condition by

wife, would not render decree for dissolution of marriage on the basis of Khula as ineffective because imposition of such condition merely would create civil liability and decree for dissolution of marriage passed by way of Khula, could not be considered as dependent on requiring wife to fulfill condition first. The decree of dissolution of marriage, on the basis of Khula, even though made conditional upon the return of the benefits, would operate to dissolve the marriage, when it is passed and the effect thereof would not be postponed till the benefits were returned.

iii) No one can be compelled to give a sample for DNA testing as it would violate his liberty, dignity and privacy of a free person guaranteed under Article 14 of the Constitution of Islamic Republic of Pakistan, 1973.

iv) The provisions of Section 12(2) C.P.C. can only be pressed into service when fraud has been practiced upon the court during the proceedings of case and judgment & decree was obtained on the basis of such fraud and misrepresentation. The scope of said provision is restricted and the applicant is obliged to prove that fraud or misrepresentation was committed by the adversary in connection with the proceedings of the court.

v) The remedy of civil suit available for setting aside the judgment and decree obtained through fraud and misrepresentation prior to the enactment of sub-section 2 of Section 12 C.P.C was taken away by this sub-Section but this remedy would not be available like a regular suit and the Court may dispose of an application under Section 12(2) C.P.C. without framing issues, recording evidence of the parties and following the procedure for trial of the suit.

vi) The determination of allegation of fraud and misrepresentation usually involves investigation into the question of fact but it is not in every case that the court would be under obligation to frame issues, record evidence of the parties and follow the procedure prescribed for the decision of the suit. If it were so, the purpose of providing the new remedy would be defeated. The framing of issues depends on the circumstances of each case, the nature of alleged fraud and a decree so obtained. Framing of issues in every case to examine the merits of the application would certainly frustrate the object of Section 12(2), C.P.C which is to avoid, protracted and the time- consuming litigation and to save the genuine decree-holder from grave hardships and ordeal of further litigation, extra burden on their exchequer and simultaneously to reduce unnecessary burden on the courts.

vii) Once the litigant opted to avail one out of the provided remedies, then it generally could not be permitted to initiate the other one.

Conclusion: i) Dissolution of marriage under the Family Courts Act, 1964 once having attained finality does not make it ineffective merely on the ground that notice of decree for dissolution of marriage was not given and certificate of effectiveness of said divorce was not issued by the concerned Union Council.

ii) Where marriage was dissolved by way of Khula imposing a condition on wife first to return the benefits of husband to him, non-fulfillment of that condition by

wife, would not render decree for dissolution of marriage on the basis of Khula as ineffective.
iii) No one can be compelled to give a sample for DNA testing.
iv) The provisions of Section 12(2) C.P.C. can only be pressed into service when fraud has been practiced upon the court during the proceedings of case and judgment & decree was obtained on the basis of such fraud and misrepresentation.
v) The Court may dispose of an application under Section 12(2) C.P.C. without framing issues, recording evidence of the parties and following the procedure for trial of the suit.
vi) The court is not in every case under obligation to frame issues, record evidence of the parties and follow the procedure prescribed for the decision of the suit.
vii) Once the litigant opted to avail one out of the provided remedies, then it generally could not be permitted to initiate the other one.

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27. **Lahore High Court**
Allah Ditta, etc. v. The State, etc.
Criminal Appeal No. 82543/2022
Shah Jahan v. The State, etc.
Criminal Revision No.7417/2023
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC1379.pdf

Facts: The accused/appellants after going through a trial in the private complaint arising out of FIR handed down by Additional Sessions Judge have been convicted under section 302(b)/34 PPC and sentenced to imprisonment for life each, with further order to pay compensation, in default to undergo simple imprisonment for one year each, benefit of section 382-B Cr.P.C. was extended. Criminal Appeal has been filed by the accused/appellants to challenge their conviction and sentence, whereas, through Criminal Revision, the complainant seeks enhancement of sentence, both these matters are subject matter of this judgment.

Issues: i) Whether a postmortem report can be viewed as a documented expert opinion and how it can be produced in court?
ii) Whether the mere production of a postmortem report is sufficient to be read in the evidence as support for the prosecution case?
iii) Whether secondary evidence for a doctor is required to be given by another doctor/expert in order to assist the Court to understand the nature of injuries?
iv) What is best course to preserve the evidence of a doctor who conducted a postmortem to avoid secondary evidence?
v) Whether it is essential to prove the non-availability of the doctor before producing secondary evidence of medical reports?
vi) Whether motive is required to be proved through an independent source of evidence other than the words of mouth if it has been set up by the prosecution?
vii) Whether the mere abscondence of the accused is conclusive proof of his guilt?

Analysis: i) Legally, Postmortem report is viewed as a documented expert opinion, therefore, its production in the evidence through primary evidence though is admissible yet contents of it cannot be read unless doctor appears as a witness to authenticate and verify that it was the report he had prepared. If doctor is not available then such report available in the Court record can be produced as secondary evidence through any person who had seen preparation of such document, knows handwriting or signature of the doctor on the report while showing a comparison with any proved document in the handwriting of such doctor, and this can also be done by production of another doctor or record keeper of the concerned hospital. This being so in the context of Article 78 of Qanun-a-Shahadat Order, 1984 which requires that execution of a document must be proved through the mode and manner as suggested in law.

ii) Thus, despite proof of execution of a document by above means, truth of contents of document is to be proved. Neither the medicolegal or postmortem reports are the categories of documents as mentioned in Article 102 so as to dispense with a formal proof of its execution nor in this case it was claimed to have been admitted by the parties so as to rule out necessity of formal proof… Thus, mere production of postmortem report is not sufficient to be read in the evidence as a support to the prosecution case…

iii) A like situation was attended in a case reported as "MUHAMMAD NAZIM and others Versus The STATE and others" (2022 P Cr. L J Note 82) [Lahore] when medical evidence was not furnished by the concerned doctor who had conducted the postmortem examination rather one Imran Shahid, record keeper appeared as CW-5, who stated that Dr. Afzal has died and produced the original record of postmortem report, it was observed that oral statement with respect to contents of document was not given by any expert witness, therefore, question of description of injury, its angle or trajectory and presence of burning around the wounds remained an unanswered story. Opinion of doctor could only be deposed by the said doctor as per Article 71 of Qanun-e-Shahadat Order, 1984 which says that oral evidence must, in all cases whatever be direct, that is to say, if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds…

iv) Corresponding to section 293 of Indian Code of Criminal Procedure, 1973, in ours section 510 exists but with slight difference, which is not applicable for medical reports. Mode of recording evidence of a doctor is mentioned in Section 509 of Cr.P.C. This Section falls in Chapter XLI which contains heading as "Special Rules of Evidence", of course an overriding effect on all other provisions, consists of four Sections 509, 510, 511 and 512 of Cr.P.C. which with some connotation to cut short the process provides an expeditious mode of recording of evidence as well as securing the evidence for trial. Section 509 of Cr.P.C… According to Section 509 of Cr.P.C., deposition of a medical witness taken and attested by a Magistrate in the presence of accused or taken on Commission may be given in evidence in an inquiry, trial or other proceedings

under this Code without calling the medical witness, however, Court does have a power to summon the medical witness as and when thinks fit. This section has like connotation as that of Section 164 of Cr.P.C., which also ensures securing of evidence of a witness but unfortunately Section 509 Cr.P.C., has lost sight of legal practitioners and by the learned Courts, therefore, on the eve of death of a medical witness or his migration to other country, medical evidence falls short of probative value which cannot be brought on record properly or if it is brought on record its probative value decreases due to non-availability of medical witness to depose about the nature, locale, size of injuries and other observation made at the time of examination and test/protocols performed to arrive at an opinion with respect to cause of death or other matters which are also relevant as per Article 65 of Qanun-e-Shahadat Order, 1984. Thus, this Section is must to be adhered by all the concerned in future and Criminal Prosecution Service (CPS) should attend to the provision for securing statement of medical witness at the earliest opportunity while producing him before the concerned Magistrate so that on the eve of non-availability of doctor such statement could be used during the trial before the Court concerned. Necessity and utility of Section 509 Cr.P.C., has also been highlighted in Rule 6, Chapter-18, High Court Rules & Orders, Volume III.

v) Before producing secondary evidence of medical reports, it is essential to prove the non-availability of doctor. In a case reported as "SOOBA and 3 others Versus THE STATE" (1994 P Cr. L J 1323), this Court while referring cases reported as Allah Ditta v. The State (P L D 1958 SC (Pak.) 290), Fazal Muhammad and another v. The state (1970 SCMR 405), Hussain Bakhsh v. The State (1971 P Cr. L J 1331) (Lahore) and Muhammad Siddique and another v. The State (1974 P Cr. L J 180) (Lahore), held that absence of doctor must be proved before bringing on record the postmortem report as secondary evidence… In a case reported as "MUHAMMAD SHAM AND 3 OTHERS versus THE STATE" (P L D 1972 Lahore 661), while referring the cases Allah Ditta v. The State (P L D 1958 S C 290) & Nityananda Roy v. Rash Behari Ray (A I R 1953 Cal. 456), matter was remanded to the trial court to examine the foot constable for proof of absence of doctor and, then by calling original postmortem report, record the statement of dispenser who reportedly worked with the doctor well conversant with his writing and signature, and thereafter by comparing the carbon copy of postmortem report with the original allow its tendering through secondary evidence to prove the postmortem report.

vi) Thus, it can safely be held that though motive was set up yet the same could not be established by the prosecution and it is trite that though the prosecution is not required to prove motive in every case, yet the same, if set up, should be proved through independent source of evidence other than the words of mouth and in case of failure to do so, the prosecution should have faced the consequences and not the defence.

vii) There is also plethora of authorities of superior Courts on this point that mere abscondence of accused is not a conclusive proof of the guilt of the accused. The value of abscondence depends upon the fact of each case and abscondence alone

cannot take the place of guilt unless and until the case is otherwise proved on the basis of cogent and reliable evidence.

Conclusion: i) See corresponding analysis No.i.
ii) The mere production of a postmortem report is not sufficient to be read in the evidence as support for the prosecution case.
iii) Secondary evidence for a doctor is required to be given by another doctor/expert in order to assist the Court to understand the nature of injuries.
iv) Section 509 Cr.P.C. provides best course to preserve the evidence of a doctor who conducted a postmortem to avoid secondary evidence.
v) It is essential to prove the non-availability of the doctor before producing secondary evidence of medical reports.
vi) Motive is required to be proved through an independent source of evidence other than the words of mouth if it has been set up by the prosecution.
vii) The mere abscondence of the accused is not conclusive proof of his guilt.

LATEST LEGISLATION / AMENDMENTS

1. Vide Notification No.36 of 2024 twenty Community based Conservancy Zones are declared in pursuance of Section 3 of Punjab Community Based Conservancy Rules 2023 and recommendation of DG, Wildlife & Parks Punjab bearing No. 1279/DG(W&P) Mgt-CBC/2023 dated 20.09.2023.
2. Vide Notification No.37 of 2024 amendments after serial no. 2, in column nos. 01 to 10 in schedule of the Directorate General Protocol, Punjab, Service Rules, 2005 are inserted.

SELECTED ARTICLES

1. MANUPATRA
https://articles.manupatra.com/article-details/Audi-Alteram-Partem-and-Nemo-Judex-In-Causa-Sua-The-Two-Pillars-of-Natural-Justice

Audi Alteram Partem and Nemo Judex in Causa Sua: The Two Pillars of Natural Justice by Surbhi Jindal and Anunay Pandey

Natural Justice, also known as procedural fairness, is a legal philosophy that dictates how legal proceedings should be conducted to ensure fairness and justice. In other words, natural justice is the principle of law that protects the rights of individuals to fair treatment in legal proceedings. The principles of natural justice assert that justice should be based on the law of nature rather than on the law of man. It revolves around the idea that decision-making should be fair and impartial and that all parties involved in a dispute should have an opportunity to be heard. Natural justice is especially necessary for those decisions that are based on personal biases or interests, or where parties could

be denied their right to fair hearing. By ensuring that decisions are made under the principles of natural justice, the legal system upholds the rule of law and ensures that justice is served. However, in some situations the principles of natural justice must be intentionally disregarded in a decision-making process. This can happen for various reasons, such as in emergencies or where national security is at stake. In cases where the principles of natural justice are excluded, post-decisional hearings may be used to provide affected individuals with an opportunity to present their case and challenge the decision. It is a process in which an individual who has already been adversely affected by a decision can present their case after the tentative decision has been made. But it is always preferable to follow the principles of natural justice in the first place to ensure that decisions are fair. This article deals with the principles of natural justice, including post-decisional hearing and exclusion of the principles of natural justice. The main objective of the article is to delve deeper into the topic's nuances in greater detail by understanding how these principles are applied practically in a legal context.

2. MANUPATRA

https://articles.manupatra.com/article-details/TRANSFER-OF-CASES-UNDER-THE-CODE-OF-CIVIL-PROCEDURE-1908

Transfer of Cases Under the Code of Civil Procedure 1908 by Aadrika Goel

The court must maintain impartiality when dealing with parties involved in a dispute. Therefore, when a plaintiff initiates a lawsuit in their preferred location, as outlined in the "Code of Civil Procedure 1908", the defendant is required to appear before the court and submit a written statement, presenting objections to the plaintiff's suit. If the defendant raises concerns related to the court's jurisdiction based on provisions within the Code of Civil Procedure, the court must initially address the jurisdictional issue. If the court determines that it lacks jurisdiction, it is obligated to transfer the lawsuit, following the guidelines. Nevertheless, if either party encounters difficulties at any point during the legal proceedings and wishes to relocate the case to a different place or court of their choice, they have the remedy to file a transfer petition in the relevant court in accordance with such applicable law. If the defendant has not consented to the chosen location for the suit, the court cannot commence the proceedings. However, it is within the court's authority to reject the defendant's application to transfer the suit, compelling the defendant to proceed with the suit in the original location. In addition to the involved parties, the court, at its discretion, possesses the authority to transfer the suit. This authority is granted to them by the Code of Civil Procedure of 1908, enabling them to address such matters and transfer the suit to another court with the appropriate jurisdiction if the interests of justice necessitate such a move. Through this research, the author has tried to critically analyze the provisions under the Code of Civil procedure relating to the Transfer of Cases with case laws.

3. LUMS LAW JOURNAL

https://sahsol.lums.edu.pk/node/16906

Criminal Defamation Laws in Pakistan and Their Use to Silence Victims of Sexual Harassment, Abuse, or Rape by Muhammad Anas Khan

In Pakistan, the discourse around defamation laws in the context of sexual harassment and abuse cases is underdeveloped. With the #MeToo movement on a rise, several victims of sexual harassment and abuse have used social media to disclose their horrific stories. These claims are generally met with counterclaims of defamation by the alleged perpetrator or their supporters, which creates further hindrance for these victims trying to speak up. The victim, while fighting their case of harassment, has to simultaneously defend themself against the defamation charges. This problem seems to be exacerbated through criminal defamation laws where a First Information Report can also be registered against the victim under Sections 499 and 500 of the Penal Code of Pakistan 1860 ("Penal Code") and under Section 20 and 21 of the Prevention of Electronic Crimes Act 2016 ("PECA") for speaking up. Therefore, it is imperative to revisit criminal defamation laws in Pakistan to analyse their misuse in such claims. This paper aims to distinguish between civil and criminal defamation laws in Pakistan: the Defamation Ordinance 2002 ("2002 Ordinance"), the Penal Code, and PECA. It analyses cases of harassment and defamation, both inside and outside of the courtrooms. However, since the jurisprudence is underdeveloped, case law alone might not be an adequate source to formulate a definitive argument. For this purpose, the paper includes interviews with lawyers, social activists, and law enforcement personnel to gauge their understanding and views on the topic. Based on these interviews, this paper attempts to analyse the jurisprudential and practical lapses in the system that cause impediments in dispensation of justice. Thus, it will also look at criminal and civil defamation laws to determine whether they hinder sexual harassment claims and violate constitutional rights to freedom of speech and expression.

4. LUMS LAW JOURNAL
https://sahsol.lums.edu.pk/node/11444

Living in the Present, Anticipating the Future: Ascribing Liability for Artificial Intelligence by Aman Rehan and Hammad Ali Kalhoro

For any legal system, determining how liability will be ascribed to a particular person is a difficult task. However, a recently popularised conundrum in legal literature considers the question of legal liability for artificially intelligent computer systems. With the advent of COVID-19, the adoption of new technologies is accelerating, and the role of AI in our lives is only going to increase. What is often overlooked is that such technologies are usually premised on the "deep learning" system, creating uncertainty in decision making, experience-based learning, and reactions to events. Considering the issue of ascribing liability for harms caused by AI, this paper scrutinises these shortcomings. It highlights how legal systems have the propensity to do more in the promulgation of industry-wide standards relating to AI products. With rapid development of AI technology and the increasing reliance on it by humans, a failure to promulgate and adopt such standards may have catastrophic consequences.

5. LUMS LAW JOURNAL
https://sahsol.lums.edu.pk/node/12844

The Hindu Marriage Act 2017: A Review by Sara Raza

Ever since Pakistan gained independence in 1947, the Hindu community has been subject to severe discrimination and marginalization. Hindu women, especially, have had to face the brunt of this unjust treatment and are regularly subjected to forced conversions, rape, and oppression within the domestic sphere. According to a report released by the Movement of Solidarity and Peace in Pakistan, up to 300 Hindu women are forced to convert and marry Muslim men every year in Pakistan. In this context, Hindu Personal Law and, specifically, law regulating marriages had been largely ignored as a legislative matter by the Parliament until two years ago, reflecting the Pakistani state's extended failure to provide legal protection to the basic social institution of family for its Hindu citizens. The Hindu Marriage Act 2017 marked a breakthrough as the first legislation dealing with personal law of Pakistani Hindus. This review will discuss ancient Hindu beliefs about marriage, problems that were caused by the lack of legislation in this respect, the Sindh Hindu Marriage Registration Act 2016, the Hindu Marriage Act 2017, its purpose, and analyze its provisions.

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FORTNIGHTLY CASE LAW BULLETIN

(16-04-2024 to 30-04-2024)

A Summary of Latest Judgments Delivered by the Supreme Court of Pakistan & Lahore High Court, Legislation/Amendment in Legislation and important Articles

Prepared & Published by the Research Centre Lahore High Court

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Naimatullah Khan, Advocate, etc. v. Federation of Pakistan, etc.
Constitution Petition No.9/2010 etc.
Mr. Justice Qazi Faez Isa, CJ, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/const.p._9_2010_25042024.pdf

Facts: These Constitutional Petitions etc. have been filed by affectees of Gujjar, Orangi, Mehmoodabad Nallahs, Nasla Tower and Tejori Heights: etc.

Issue: Whether anyone including the provincial and Federal governments, and all those under them can encroach upon public roads and pavements?

Analysis: It is unfortunately noted that encroachments on public roads and pavements are made by those paid out of the public exchequer. Occupants of properties also assume that the pavement running in front of their property is theirs, to do with it as they please. Generators are also installed thereon. Pavements are for the use of the public; access thereto and use thereof cannot be prevented or restricted. Everyone, including the provincial and Federal governments, and all those under them must abide by the law and cannot encroach upon public roads and pavements nor can block them which may stop or restrict public use thereof. Citizens must not be inconvenienced. Those paid out of the public exchequer serve the people, and not vice versa. The misplaced exceptionalism negates the Constitution and the rule of law.

Conclusion: Everyone, including the provincial and Federal governments, and all those under them must abide by the law and cannot encroach upon public roads and pavements nor can block them which may stop or restrict public use thereof. Citizens must not be inconvenienced.

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2. **Supreme Court of Pakistan**
Haji Musharraf Mahmood Khan (deceased) through his legal heirs v. Sardarzada Zafar Abbas (deceased) through his L.Rs., etc.
Civil Petition No. 423-L of 2018
Mr. Justice Qazi Faez Isa, CJ, Mr. Justice Muhammad Ali Mazhar, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.p._423_l_2018.pdf

Facts: This Civil Petition for leave to appeal is directed against the order passed by the Lahore High Court on the Office Objection raised in Civil Revision. The High Court maintained the Office Objection and refused to restore the Civil Revision which was dismissed for non-prosecution.

Issues: i) What is the scope of exercise of revisional jurisdiction by the Court under section 115 CPC?
ii) What is the objective of law of limitation?

iii) Which Article of Limitation Act applies to an application for restoration of revision petition, that is dismissed in default?

iv) Whether Court after dismissal in default of revision petition, can fix the time for its restoration?

v) Where the words of a statute are explicit and unambiguous, can recourse be made to any other interpretation other than the literal rule?

vi) When no procedure has been laid down for restoration, if the revision is dismissed for non-prosecution whether a litigant can be left without any remedy?

Analysis:

i) The language used under Section 115 of the Code of Civil Procedure, 1908 ("C.P.C.") unequivocally visualizes that the revisional court has to analyze the allegations of jurisdictional error, such as when an exercise of jurisdiction is not vested in the court below, or a jurisdiction that is vested in it by law was not exercised, and/or the court has acted in exercise of its jurisdiction illegally or with material irregularity, or committed some error of procedure in the course of the trial which is material and has affected the ultimate decision. The Court can even exercise its *suo motu* jurisdiction to ensure effective superintendence and visitorial powers to make sure, by all means, the strict adherence to the safe administration of justice, and may correct any error unhindered by technicalities.

ii) The objective of the law of limitation is not to confer a right, but it ordains an impediment after a certain period to enforce an existing rights or claims which have become stale by the efflux of time. The Court, under Section 3 of the Limitation Act, 1908 (the "Limitation Act") is obligated, independently and as its primary duty, to advert to the question of limitation and make a decision, regardless of whether this question is raised by the other party or not.

iii) In the C.P.C., there is no specific section or order which applies to the restoration of revision application dismissed in default. In unison, no specific Article is mentioned in the Limitation Act, whereby any specific period of limitation is provided for applying for restoration of a revision application dismissed for non-prosecution. To address this situation, the legislature has provided a residuary Article 181 in the Limitation Act, which is meant for all applications for which no period of limitation is provided elsewhere in the schedule or by Section 48 of the C.P.C., and within the province and under the purview of this Article, all such applications can be preferred within a period of 3 years when the right to apply accrues.

iv) In case reasonable and satisfactory grounds are made out, including the limitation, the Court may restore the case with or without cost, but while dismissing the case for non-prosecution, the Court cannot fix any specific time or period for applying for restoration as was done by the High Court in this case, whereby a barrier of 60 days was fixed for filing of the restoration application. Such directions were contrary to the provisions of Limitation Act, wherein the limitation period for applying for restoration of a revision petition or application is regulated and controlled by the Article 181 of the Limitation Act… Therefore, the fixation of time or limitation of 60 days by the Court is tantamount to

curtailing or restricting the statutory period of 3 years to only 60 days which was unwarranted and in excess of jurisdiction.

v) Where the words of a statute are explicit and unambiguous, recourse cannot be made to any other interpretation other than the literal rule. The language used in a statute is a decisive feature of the legislative intention and aspiration. The Courts are obligated to decide what the law is and not what it should be and should not assume the role of a lawmaker. It is a well-known principle of interpretation of statutes that a statute should be interpreted in a manner which suppresses mischief and advances the remedy.

vi) …there is no doubt that civil revision under section 115, C.P.C. entertained by the High Court has to be disposed of in view of provisions of section 117, C.P.C. A thorough survey of C.P.C. will indicate that there is no provision for recalling/setting aside the order dismissing a revision for non-prosecution. It may be noted that there are many other proceedings under C.P.C. in respect of which no procedure has been laid down if the same is dismissed for non-prosecution but a litigant suffering from such difficulty cannot be left without any remedy because law favours adjudication of matters on merits unless there exists some insuperable practical obstacle… It was further held that there is no specific provision in the C.P.C. to restore a revision dismissed for non-prosecution, therefore, an aggrieved party can claim relief under section 151, C.P.C.

Conclusion: i) See analysis portion above.

ii) See analysis portion above.

iii) Article 181 of Limitation Act applies in such situation as residuary Article.

iv) The Court cannot fix any specific time or period for applying for restoration of revision petition. Fixation of time or limitation of 60 days by the Court is tantamount to curtailing or restricting the statutory period of 3 years to only 60 days.

v) Where the words of a statute are explicit and unambiguous, recourse cannot be made to any other interpretation other than the literal rule.

vi) When no procedure has been laid down for restoration, if the revision is dismissed for non-prosecution, the litigant suffering from such difficulty cannot be left without any remedy and he can claim relief under section 151, C.P.C.

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3. **Supreme Court of Pakistan**
Mst. Jehan Bano & others v. Mehraban Shah & others
Civil Petition No.394-P of 2010
Mr. Justice Qazi Faez Isa HCJ, Mr. Justice Irfan Saadat Khan, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._394_p_2010.pdf

Facts: This petition for leave to appeal has been filed by the petitioners against the judgment of the Revisional Court, whereby, the Revisional Court upheld the judgment of the Appellate Court in which civil suit filed by the petitioner was dismissed while civil suit filed by the respondents No. 1 to 3 was decreed.

Issues: i) Whether according to section 52 of the West Pakistan Land Revenue Act 1967, presumption of truth is attached to the entries made in the periodical record of rights i.e. jamabandis/khasra girdawari until contrary is proved?
ii) Whether mutation by itself does not create title and it carries a rebuttable presumption?
iii) Whether Supreme Court does lay its hand in the case of concurrent findings based on proper appraisal of evidence?

Analysis: i) According to section 52 of the West Pakistan Land Revenue Act 1967 presumption of truth is attached to the entries made in the periodical record of rights i.e. jamabandis/khasra girdawari until contrary is proved.
ii) It is settled law that mutation by itself does not create title and it carries a rebuttable presumption.
iii) In order to justify the grant of leave under Article 185 (3) of the Constitution of Islamic Republic of Pakistan (hereinafter referred to as the 'Constitution'), serious question of law is prima-facie to be made out or some case of grave miscarriage of justice has to be established. The scope of petition under Article 185 (3) of the Constitution is confined to the extent of substantial question of law. According to settled law, this Court does not lay its hand in the case of concurrent findings based on proper appraisal of evidence unless serious question of law arises or the findings are found improper, perverse or untenable in law.

Conclusion: i) According to section 52 of the West Pakistan Land Revenue Act 1967 presumption of truth is attached to the entries made in the periodical record of rights i.e. jamabandis/khasra girdawari until contrary is proved.
ii) Mutation by itself does not create title and it carries a rebuttable presumption.
iii) Supreme Court does not lay its hand in the case of concurrent findings based on proper appraisal of evidence unless serious question of law arises or the findings are found improper, perverse or untenable in law.

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4. **Supreme Court of Pakistan**
Khawaja Adnan Zafar v. Hina Bashir and others
Civil Petition Nos. 1708-L/2022, 3435-L/2022, 2672-L/2023, 3152-L/2023, 219-L/2024 AND 303-L/2024
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Irfan Saadat Khan, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1708_l_2022.pdf

Facts: The petitioner challenged the High Court's interim rulings in habeas corpus and minor custody cases by filing this Petition under Article 183(3) of the Islamic Republic of Pakistan, 1973. Meanwhile, the petitioner's claim for permanent custody of minor under Section 25 of the Act of 1890 is still pending before the Guardian Judge.

Issue: Whether interim orders passed by any High Court can be interfered under Article

185(3) of the Constitution of the Islamic Republic of Pakistan 1973 by the Supreme Court of Pakistan?

Analysis: The orders of the Courts below assailed by the petitioner in the instant petitions are interim in nature. According to the established practice, settled principles of law and policy of this Court, ordinarily interim orders passed by the high Court are not interfered under Article 185(3) of the Constitution of the Islamic Republic of Pakistan 1973 and such intervention is warranted only in exceptional circumstances involving flagrant violation of law, wrongful exercise of jurisdiction or a manifest grave injustice.

Conclusion: Ordinarily interim orders passed by the high Court are not interfered under Article 185(3) of the Constitution of the Islamic Republic of Pakistan 1973 and such intervention is warranted only in exceptional circumstances involving flagrant violation of law, wrongful exercise of jurisdiction or a manifest grave injustice.

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5. **Supreme Court of Pakistan**
Mehboob-ur-Rehman and Jawar v. The State through Prosecutor General, Balochistan.
Crl. M. Appeal No. 1-0/24 in Criminal Petition No. Nil /2024.
Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/crl.m.appeal._1_q_2024.pdf

Facts: The appellants, were tried, convicted, and sentenced for commission of offences under Sections 380 and 457 of the Pakistan Penal Code, 1860, by learned Judicial Magistrate. The convictions and sentences awarded to the appellants were confirmed by the appellate and, thereafter, maintained by the Revisional Courts, respectively. Aggrieved thereof, the appellants filed the petition for leave to appeal against the judgment of the Revisional Court maintaining their conviction and sentence, which was not entertained by the office of this Court, leading to the filing of the instant Criminal Misc. Appeal.

Issue: How to deal matter relating to the presence of the accused/convict challenging adverse orders/judgment at the time of filing criminal petitions before Supreme Court?

Analysis: The matter relating to the presence of the accused/convict challenging adverse orders/judgment at the time of filing criminal petitions before this Court has been provided under Rule-8 of Order XXIII of the Supreme Court Rules, 1980…A careful reading of the above provisions makes it clear that: firstly, for an accused challenging any adverse order relating to his prayer for the grant of bail before arrest, the accused may not surrender to the police, and still undertake to appear and surrender in this Court at the time of hearing of his petition for the grant of bail before arrest, to render the petition maintainable; secondly, and more relevant

to the issue in hand, for a convict challenging his conviction and sentence of imprisonment, he has to first surrender to undergo the term of the sentence awarded, so as to render his petition maintainable.

Conclusion: See above in analysis portion.

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6. **Supreme Court of Pakistan**
Fozia Mazhar v. Additional District Judge, Jhang and others
Civil Petition No.1737-L/2020
Mr. Justice Yahya Afridi, Mr. Justice Amin-Ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1737_l_2020.pdf

Facts: The petitioner filed a suit for dissolution of marriage which following failure of pre-trial reconciliation, was decreed on the basis of khula. A purported joint application for setting aside the decree was filed on behalf of the petitioner and the respondent, which was allowed. This order of recalling the decree of dissolution of marriage on the basis of khula was challenged by the respondent in a petition under Section 12(2) of C.P.C. which was allowed by the Family Court and confirmed by the District Court, and not interfered with by the High Court in the impugned judgment, hence, the present petition.

Issues: i) Whether provisions of CPC are applicable before family court and application u/s 12(2) can be filed before family court?
ii) Whether High Court in exercise of Constitutional Jurisdiction can interfere in the findings on controversial questions of fact based on evidence?

Analysis: i) The Family Court may apply the general principles enshrined in C.P.C. in proceeding with not only the trial but also exercise jurisdiction in entertaining an application of an aggrieved party, challenging the validity of a judgment, decree or order on the plea of fraud or misrepresentation.
ii) The High Court, in exercise of its constitutional writ jurisdiction, is not supposed to interfere in the findings on controversial questions of fact based on evidence. The scope of judicial review by the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 in such cases is limited to the extent of misreading or non-reading of evidence, or if the finding is based on no evidence, which may cause a miscarriage of justice. It is not proper for the High Court to disturb the finding of fact through a reappraisal of evidence in constitutional writ jurisdiction or to exercise this jurisdiction as a substitute for revision or appeal.

Conclusion: i) See under above analysis no. 01.
ii) See under above analysis no. 02.

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7. **Supreme Court of Pakistan**
Shaista Habib v. Muhammad Arif Habib and others
Civil Petition No.3801 Of 2022
Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3801_2022.pdf

Facts: The High Court has dismissed the petition of petitioner, who had invoked the jurisdiction vested under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. She had challenged the orders of two competent courts, whereby the question of custody of a child was decided against her. Through this Petition she has sought leave against the judgment of the High Court.

Issues: i) What is the foundational principle for deciding the custody disputes?
ii) Whether the rule that the father is a natural guardian and, therefore, entitled to the custody of the child or the mother loses the right of hizanat after the minor has attained the prescribed age or puberty is absolute?
iii) What should be the paramount and overarching consideration while deciding the custody of child?
iv) Whether the factors or variables that may be taken into consideration while determining the question of custody of a child are exhaustive and same for all cases?
v) Whether the second marriage contracted by the mother can be a stand-alone reason to disqualify her from obtaining the custody of the child?
vi) Whether in the context of custody disputes the court can grant the custody to a person other than the parents?
vii) Whether the guardian and family court is the final arbiter for determining the question of custody?
viii) What if the court has ignored the welfare of the child and the latter's best interest or has given preference to some other ground?
ix) What is the constitutional duty of the State regarding the protection of the rights of children?

Analysis: i) This was definitely an overarching principle which ought to have been considered while deciding the custody dispute. The rights of the parents were subservient to the welfare of the minor and thus it was the duty of the courts to assess and determine a course that would have served the best interest of the minor. Any decision regarding the custody of a child without assessment and determination of the latter's welfare and best interests by taking into consideration the relevant factors and variables cannot be sustainable, nor can the exercise of discretion be lawful. The welfare of a minor and the latter's best interest is the foundational principle for deciding custody disputes.
ii) It is settled law that the father is the natural guardian while the mother is entitled to the custody (hizanat) of a male child till the age of seven years while in case of a female till she attains puberty. This right continues notwithstanding a divorce or separation. As a natural guardian it is the obligation of the father to

maintain the child even if the custody is with the mother. The inability of the mother to financially support the child is not a determinate ground to deprive her from custody because in such an eventuality the father's obligation regarding maintenance is not extinguished. The rule that the father is a natural guardian and, therefore, entitled to the custody of the child nor that the mother loses the right of hizanat after the minor has attained the prescribed age or puberty, as the case may be, is not absolute, rather subject to exceptions.

iii) The decision regarding custody of a child is governed on the fundamental principle, the paramount and overarching consideration is the welfare of the child i.e to ascertain the course which is in the latter's best interest. The crucial criterion is, therefore, the best interest and welfare of a child while determining the question of custody. The rights or aspirations of the parents or some other person are subservient to this principle and each case of custody must be decided on the basis of ascertaining a course which is in the 'best interest of the child'.

iv) The factors or variables that may be taken into consideration while determining the question of custody of a child are not exhaustive but they would depend on the facts and circumstances of each case. The guiding principle is to ensure that the determination of custody promotes the rights of the child as well as the latter's wellbeing. The overriding consideration must be to protect the child from any physical, mental or emotional injury, neglect or negligent treatment. The mother’s disability, illiteracy or financial status is not the sole determinant factors.

v) The second marriage contracted by the mother also cannot become a stand-alone reason to disqualify her from obtaining the custody of the child. The question of custody involves taking into consideration the factors which are relevant to the upbringing, nursing and fostering of the child. It essentially extends to the emotional, personal and physical wellbeing of a child. The sole object is to ensure that the overall growth and development of the child is guaranteed.

vi) The overarching principle in cases involving the question of custody and visitation rights of the parents is, therefore, determination of the welfare of the child, i.e. to ascertain a course that would serve the best interest of the child. Sections 17 and 25 of the Act of 1890 set out the broad guidelines which are to be taken into consideration while deciding custody disputes. It is the duty of the court to form an opinion and adopt a course on the basis of the paramount principle of the welfare of the child. Section 17 explicitly provides that a court shall be guided by what appears in the circumstances to secure the welfare of the minor, consistent with the law to which the minor is subject. Sub- section (3) provides that if the minor is old enough to form an intelligent preference then the court may consider that preference. … while determining the welfare of the child in the context of custody disputes the court may grant the custody to a person other than the parents e.g the grandparents or aunt, if doing so would promote the welfare and best interest of the child.

vii) As a general rule the guardian and family court is the final arbiter for determining the question of custody, except when it has made a determination in

an arbitrary, capricious or fanciful manner i.e when the fundamental principle of welfare of the child has not been considered or determined in the light of the variables which are relevant in the given circumstances.

viii) If the court has ignored the welfare of the child and the latter's best interest or has given preference to some other ground then the decision would not be sustainable. The court, in its endeavor to assess and determine the welfare of a child, is not bound to follow rigid formalities, strict adherence to procedure or rules or technicalities if doing so may hamper the determination or undermine the fundamental criterion of the best interest of the child.

ix) It is a constitutional duty under Article 29(3) of the President or the Governor of the Province, as the case may be, to cause to be prepared and laid before the respective legislatures a report in respect of each year, inter alia, regarding observance and implementation of the obligation relating to children under Article 37 of the Constitution. Likewise, it is an obligation of the State to ensure that the fundamental rights enshrined in the Constitution are protected and fulfilled in the case of children. It is, therefore, implicit in the obligation of the State towards protecting the rights of the children to provide child friendly courts presided by specially trained professional judges.

Conclusion: i) The welfare of a minor and the best interest is the foundational principle for deciding custody's disputes.

ii) The rule that the father is a natural guardian and, therefore, entitled to the custody of the child and that the mother loses the right of hizanat after the minor has attained the prescribed age or puberty, as the case may be, is not absolute, rather subject to exceptions.

iii) The decision regarding custody of a child is governed on the fundamental principle that the paramount and overarching consideration is the welfare of the child i.e. to ascertain the course which is in the latter's best interest.

iv) The factors or variables that may be taken into consideration while determining the question of custody of a child are not exhaustive but they would depend on the facts and circumstances of each case.

v) The second marriage contracted by the mother also cannot become a stand-alone reason to disqualify her from obtaining the custody of the child.

vi) While determining the welfare of the child in the context of custody's disputes the court may grant the custody to a person other than the parents' e.g the grandparents or aunt, if doing so would promote the welfare and best interest of the child.

vii) See above analysis no. vii.

viii) If the court has ignored the welfare of the child and the latter's best interest or has given preference to some other ground then the decision would not be sustainable.

ix) See above analysis no. ix.

8. **Supreme Court of Pakistan**
Muhammad Yousaf v. Huma Saeed and others
Civil Petition No.2673of 2022
Mr. Justice Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2673_2022.pdf

Facts: The respondent's suit seeking recovery of dower, maintenance, dowry articles and gold ornaments was partially decreed by the trial court, which decree was challenged by both parties preferring separate appeals. The appeal preferred by the petitioner was partially allowed and that of the respondent was dismissed. Then, both the parties invoked the jurisdiction of the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 and the High Court declared the respondent entitled to the plot described in column 17 of the *Nikah Nama*. Hence, this Petition.

Issues: i) What presumption is attached with entries in the columns of *Nikah Nama*?
ii) What is significance of informed understanding of the bride regarding her rights whilst determining dower at the time of the execution of the *Nikah Nama*?
iii) Whether intention of the contracting parties may be ascertained from the entries in the *Nikah Nama* described in Form II of the Rules of 1961, merely on the basis of headings thereof?
iv) How the terms and conditions stipulated in a *Nikah Nama* should be interpreted and if there is doubt and ambiguity regarding the intent of the parties, how can it be resolved?

Analysis: i) The *Nikah Nama* is a contract between man and woman, which contains the terms of the *Nikah* and conditions which are meant to secure the rights and interests of both the parties.
ii) *Nikah Nama* is in the nature of a civil contract and it contains the terms agreed upon by the husband and the wife. The foundational principle ingredient of *Nikah* is the free consent of the contracting parties, which inherently involves the informed understanding of each party regarding his or her rights and as well as freedom to negotiate and settle the terms and conditions. 'Dower' is obligatory because it is an essential requirement of a valid marriage contract. Dower is given by the husband to the wife and its determination is subject to the consent of the wife as well as such determination at the time of the execution of the *Nikah Nama* must necessarily be guided by an informed understanding of the bride regarding her rights. The freedom to negotiate and settle the terms by the bride, therefore, becomes crucial.
iii) Form II of the West Pakistan Rules of 1961 has prescribed the form of *Nikah Nama* and its entries. *Nikah Nama* is the deed of marriage contract between the parties and its clauses/columns/contents are to be construed and interpreted in the light of the intention of the parties. The contract has to be read as a whole and the words are to be taken in their literal, plain and ordinary meaning. Hence, the form of *Nikah Nama* nor its headings are conclusive or sacrosanct. It is the intent of the

parties which would be the determining factor.
iv) The rule of *contra proferentem*, known as the rule of interpretation against the draftsman, is a recognized principle of contractual interpretation which provides that in case of an ambiguous promise, agreement or term, the preferred construction should be the one that works against the interests of the party which had drafted the contract. It therefore becomes crucial for a court to be satisfied, while interpreting the contents of the columns of a *Nikah Nama*, that the wife understood each column and was informed of her rights at the time of its execution and that she had exercised her free consent while settling the terms and conditions thereof.

Conclusion: i) *Nikah Nama* is a public document and a strong presumption of truth is attached with the entries recorded in the columns of *Nikah Nama*.
ii) The bride is entitled, as an expression of her free consent, to negotiate the terms of dower or at least take informed decisions in the context of its determination before the *Nikah Nama* is executed.
iii) Neither the prescribed form under Form II of the West Pakistan Rules of 1961 nor the headings of the entries contained therein are conclusive for ascertaining the intent of the two parties to the marriage contract.
iv) In case the columns of the *Nikah Nama* have been filled by others without meaningful consultation of the wife, then a doubt or ambiguity cannot be interpreted against her rights or interests because any ambiguity in a contract is to be resolved by ascertaining the real intention of the parties.

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9. **Supreme Court of Pakistan**
Syed Sakhawat Hussain v. The State and another
Criminal Petition No. 155 of 2024
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._155_2024.pdf

Facts: The petitioner called in question an order passed by the Lahore High Court whereby his post arrest bail application in a Case FIR for offences under Sections 34, 109, 406,419, 420, 467, 468 and 471 PPC, was dismissed.

Issue: Whether mere receipt of funds in the bank account of a person can be construed as proof of his involvement in a scam?

Analysis: The grant of bail is a fundamental right and must be considered in light of the circumstances of each case, mere receipt of funds in a bank account cannot be construed as proof of involvement in the scam at this stage as there is insufficient and incomplete material available on the record to establish any connection of the petitioner. Petitioner's criminal liability can only be determined after recording of evidence by the Trial Court. The mere nomination of the petitioner in the FIR without substantive material and without nominating the account holder by whom

the amount was allegedly transferred in the bank account of the petitioner's company is insufficient to justify his further detention.

Conclusion: Mere receipt of funds in the bank account of a person cannot be construed as proof of his involvement in a scam unless there is sufficient material available on the record to establish any connection of such person with the scam.

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10. **Supreme Court of Pakistan**
Muhammad Ramzan v. Khizar Hayat and another
Criminal Petition No.887-L of 2013
Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gosv.pk/downloads_judgements/crl.p._887_l_2013_24042024.pdf

Facts: This Criminal Petition is directed against judgment passed by the Lahore High Court, whereby the criminal appeal filed by one of the respondents was allowed by acquitting him from the charge and the murder reference was answered in the negative by not confirming the death sentence.

Issues: i) Whether capital punishment can be awarded on the basis of testimony of an interested witness without corroboration by any independent evidence?
ii) What is the importance of forensic science in the criminal justice system?

Analysis: i) The testimony of an interested witness should be scrutinized with care and caution. Independent corroborating evidence is essential to test the validity and credibility of the testimony of interested witness.
ii) The cornerstone of the criminal justice system is the effective functionality of the investigating agency and prosecution. The principle of fair trial and due process are guaranteed under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. The dispensation of justice and fair adjudication require that the accused be equitably treated, investigated and prosecuted in accordance with the law. Forensic deals with the application of scientific techniques to provide objective, circumstantial evidence. Forensic science means the science which is used in the courts of law for the purposes of detection and prosecution of crime.

Conclusion: i) Capital punishment cannot be awarded on the basis of testimony of an interested witness unless same is corroborated by independent evidence.
ii) The forensic science plays a significant role in the criminal justice system by providing data that can be used to assess the degree of guilt of a suspect.

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11. **Supreme Court of Pakistan**
The Inspector General of Police, Punjab & Others v. Waris Ali (deceased) through LRs & Others
Civil Appeal No. 3-L OF 2016
Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._3_l_2016.pdf

Facts: By leave of Supreme Court granted earlier, the Appellants, Inspector General of Police, Punjab (IGP) and others challenged the order by the Punjab Service Tribunal, Lahore (Tribunal) whereby the appeal filed by Respondent No.1 was allowed.

Issues: i) What is the criteria of promotion of upper subordinates i.e. Inspector, SI and ASI?
ii) Why there is focus on Rule 19.25 of Police Rules 1934 for the purposes of promotions?

Analysis: i) As per Rule 19.25, officers have to undergo various courses (A, B, C and D) to qualify for promotion. Training of upper subordinates, being Inspector, SI and ASI, is a mandatory requirement of law for the purposes of promotion in terms of Rule 19.25 of the Rules. Hence, for all intents and purposes, promotion from the date of the promotion of juniors is not possible for upper subordinates in terms of the clear provisions of Rule 19.25. It is critical to note that an officer must complete the required course(s) before seeking promotion.
ii) We also note that the focus of Rule 19.25 of the Rules is capacity building in order to develop knowledge, skill and the necessary traits required for the post and rank. The purpose being that officers must have the requisite abilities to perform their duty.

Conclusion: i) Training of upper subordinates, being Inspector, SI and ASI, is a mandatory requirement of law for the purposes of promotion in terms of Rule 19.25 of the Rules and an officer must complete the required course(s) before seeking promotion.
ii) See analysis portion above.

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12. **Supreme Court of Pakistan**
Sardaran Bibi v. The State and others
Criminal Petition No.412-L/2014
Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik
Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._412_l_2014.pdf

Facts: This Criminal Petition is directed against the judgment passed by the Lahore High Court in criminal appeal relating to Murder Reference, whereby the Appeal filed by accused persons was accepted and the conviction and the sentence awarded to them by the Trial Court in Sessions Complaint was set aside**.**

Issues: i) Whether a single circumstance is enough to extend benefit of the doubt to the accused?
ii) What is the scope of interference in appeal against acquittal?

Analysis: i) For extending benefit of doubt to an accused, it is not necessary that there should be many circumstances creating doubts. It is by now well settled that benefit of a single circumstance, deducible from the record, intriguing upon the integrity of prosecution case, is to be extended to the accused without reservation as it is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace.
ii) It is well settled exposition of law that the scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, in other words, the presumption of innocence is doubled.

Conclusion: i) For extending benefit of doubt there may not be many circumstances, as a single confidence aspiring doubt is enough to give benefit of the same to the accused.
ii) The Courts are very slow in interfering with an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law or suffering from the errors of grave misreading or non-reading of the evidence.

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13. **Supreme Court of Pakistan**
Syed Qamber Ali Shah v. Province of Sindh and others
Criminal Petition No.99-K/2018
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._99_k_2018.pdf

Facts: This Criminal Petition for leave to appeal is directed against the consolidated order, whereby the High Court of Sindh, Karachi, set aside the order passed by the Justice of Peace/IInd Additional & District and Sessions Judge, in Criminal Misc. Application.

Issues: i) Whether under section 22-A, Cr.P.C, it is the function of the Justice of Peace to punctiliously or assiduously scrutinize the case or to render any findings on merits?
ii) Whether there is any provision in any law, including Section 154 or 155 of the Cr.P.C., which authorizes an Officer Incharge of a Police Station to hold any enquiry to assess the correctness or falsity of the information before complying with the command of the said provisions?
iii) Whether the remedy of filing a direct complaint can measure or match up to the mechanism provided under section 154, Cr.P.C?
iv) Whether the High Court in its inherent jurisdiction conferred under Section 561- A, Cr.P.C., can be deemed to be an alternative jurisdiction or additional

jurisdiction and can be exploited to disrupt or impede the procedural law on the basis of presumptive findings or hyper-technicalities?

v) Whether the mere registration of FIR does insinuate the conviction?

Analysis: i) Under section 22-A, Cr.P.C, it is not the function of the Justice of Peace to punctiliously or assiduously scrutinize the case or to render any findings on merits but he has to ensure whether, from the facts narrated in the application, any cognizable case is made out or not; and if yes, then he can obviously issue directions that the statement of the complainant be recorded under Section 154. Such powers of the Justice of Peace are limited to aid and assist in the administration of the criminal justice system. He has no right to assume the role of an investigating agency or a prosecutor but has been conferred with a role of vigilance to redress the grievance of those complainants who have been refused by the police officials to register their reports. If the Justice of Peace will assume and undertake a full-fledged investigation and enquiry before the registration of FIR, then every person will have to first approach the Justice of Peace for scrutiny of his complaint and only after clearance, his FIR will be registered, which is beyond the comprehension, prudence, and intention of the legislature. Minute examination of a case and conducting a fact-finding exercise is not included in the functions of a Justice of Peace but he is saddled with a sense of duty to redress the grievance of the complainant who is aggrieved by refusal of a Police Officer to register his report.

ii) At whatever time, an Officer Incharge of a Police Station receives some information about the commission of an offence, he is expected first to find out whether the offence disclosed fell into the category of cognizable offences or non-cognizable offences. There is no provision in any law, including Section 154 or 155 of the Cr.P.C., which authorizes an Officer Incharge of a Police Station to hold any enquiry to assess the correctness or falsity of the information before complying with the command of the said provisions. He is obligated to reduce the same into writing, notwithstanding the fact whether such information is true or otherwise. The condition precedent for recording an FIR is that it should convey the information of an offence and that too a cognizable one.

iii) The remedy of filing a direct complaint cannot measure or match up to the mechanism provided under section 154, Cr.P.C., in which the Officer Incharge of a Police Station is duty bound to record the statement and register the FIR if a cognizable offence is made out. If in each and every case it is presumed or assumed that instead of insisting or emphasizing the lodgment of an FIR, the party may file a direct complaint, then the purpose of recording an FIR, as envisaged under section 154, Cr.P.C., will become redundant and futile and it would be very easy for the police to refuse the registration of an FIR with the advice to file direct complaint.

iv) It is well-known that the inherent jurisdiction conferred under Section 561- A, Cr.P.C., cannot be deemed to be an alternative jurisdiction or additional jurisdiction and cannot be exploited to disrupt or impede the procedural law on

the basis of presumptive findings or hyper-technicalities, but it is meant to protect and safeguard the interest of justice to redress grievances of aggrieved persons for which no other procedure or remedy is provided in the Cr.P.C. Despite everything, the ends of justice inescapably denote justice as administered and dispensed with by the courts but not justice in an abstract and intangible notion.

v) The mere registration of FIR does not insinuate the conviction but as a rider, it is clearly provided under Section 169 of the Cr.P.C. that if upon an investigation, it appears to the officer incharge of the police-station, or to the police-officer making the investigation that there is no sufficient evidence or reasonable ground or suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or send him for trial. While Section 173 Cr.P.C inter alia provides that as soon as the investigation is completed, the officer incharge of the police station shall, through the Public Prosecutor, forward to a Magistrate empowered to take cognizance of the offence on a policereport, in the form prescribed by the Provincial Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and communicate, in such manner as may be prescribed by the Provincial Government.

Conclusion: i) Under section 22-A, Cr.P.C, it is not the function of the Justice of Peace to punctiliously or assiduously scrutinize the case or to render any findings on merits.

ii) There is no provision in any law, including Section 154 or 155 of the Cr.P.C., which authorizes an Officer Incharge of a Police Station to hold any enquiry to assess the correctness or falsity of the information before complying with the command of the said provisions.

iii) The remedy of filing a direct complaint cannot measure or match up to the mechanism provided under section 154, Cr.P.C.

iv) The High Court in its inherent jurisdiction conferred under Section 561- A, Cr.P.C., cannot be deemed to be an alternative jurisdiction or additional jurisdiction and cannot be exploited to disrupt or impede the procedural law on the basis of presumptive findings or hyper-technicalities.

v) The mere registration of FIR does not insinuate the conviction.

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14. **Lahore High Court**
Province of Punjab through DOR/ADC & others v. Firm Friends & Engineers Bahawalpur & others
Civil Revision No.235 of 2016/BWP
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2024LHC1582.pdf

Facts: A contract for construction of metalled road was awarded to the respondent contractor. Subsequently, a dispute arose between the parties whereupon the Ombudsman, Punjab, directed the departmental authorities to get the matter resolved through arbitration. The trial court while making the Award as rule of the Court, modified the same. Being aggrieved the petitioners preferred an appeal whereas the respondent-contractor, instead of challenging the judgment and decree of the learned Trial Court through independent appeal, filed cross-objections. The Appellate Court while dismissing the appeal of the petitioners accepted the cross-objections filed by the respondent-contractor.

Issues: i) How the period of limitation is to be calculated where no notices were issued to the parties by the Arbitrator(s), in terms of section 14 of the Act 1940?
ii) Where no objections were filed by a party against the Award announced by the Arbitrators, whether such a party can move the Court for modification of the same?
iii) Whether the decision of a court can be set aside merely on the ground that independent findings on all *Issues* have not been given?
iv) Whether a party can be allowed to raise objection at some subsequent stage when such a party opts to lead evidence and gets decision of a matter, without raising any objection against framing of *Issues* by the court of first instance?
v) Whether the request of a party before the Civil Court for modification of the Award is entertainable where no objections were filed by such a party before the Arbitrators?

Analysis: i) Where notices are issued to the parties by the Arbitrator(s), in terms of section 14 of the Act 1940, the period of limitation to file Award in the court by the Arbitrator or to move an application by any of the parties seeking direction for filing of Award in the Court and to make the same as rule of the court, is governed under Article 178 of the Limitation Act, 1908. As far as the case in hand is concerned, no such notices were issued, thus, the period of limitation for the respondent-contractor to file the application, subject matter of this petition, was to be governed under residuary Article 181 of the Limitation Act, 1908.
ii) Section 15 of the Act, 1940 empowers the Court to modify an Award announced by the Arbitrator(s) while dealing with an application filed under the Act, 1940 provided the conditions stipulated under the said provision are fulfilled. A party can move the court for modification of an Arbitration Award even if no objections were filed by such party against the Award announced by the Arbitrators…
iii) In routine if a court fails to give its independent findings under each *Issue* same is not sustainable, however, when controversy between the parties has been clinched in an exhaustive manner, the decision of a court cannot be set aside merely on the ground that independent findings on all *Issues* have not been given.
iv) When a party opts to lead evidence and gets decision of a matter, without raising any objection against framing of *Issues* by the court of first instance, it cannot be allowed to raise such objection at some subsequent stage.

v) while dealing with an application for making an Award as rule of the court, the Court is supposed to consider as to whether the request can be acceded to or not notwithstanding the fact as to whether any objection was filed by the either side or not.

Conclusion: i) Where no notices were issued to the parties by the Arbitrator(s), in terms of section 14 of the Act 1940, the period of limitation is to be governed under residuary Article 181 of the Limitation Act, 1908.
ii) A party can move the court for modification of an Arbitration Award even if no objections were filed by such party against the Award announced by the Arbitrators.
iii) The decision of a court cannot be set aside merely on the ground that independent findings on all *Issues* have not been given when controversy between the parties has been clinched in an exhaustive manner.
iv) A party cannot be allowed to raise objection at some subsequent stage when such a party opts to lead evidence and gets decision of a matter, without raising any objection against framing of *Issues* by the court of first instance.
v) The request of a party before the Civil Court for modification of the Award is entertainable even where no objections were filed by such a party before the Arbitrators.

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15. **Lahore High Court**
Wajid Ali v. The Govt. of Punjab & others
Writ Petition No.68366 of 2023
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2024LHC1849.pdf

Facts: The petitioner applied against the post of Assistant Director (Records) BS-17. Upon conclusion of the recruitment process, appointment of the petitioner was recommended by the PPSC to respondent No.2. Resultantly, the petitioner was appointed against the aforesaid post, on contract basis for a period of three years and he assumed the charge of the post. Since the petitioner completed three years' mandatory service, he made various requests before the competent authority for regularization of his services in the light of the Punjab Regularization of Service Act, 2018 but as the same were given deaf ear, the petitioner has filed this Petition seeking regularization of his services against the subject post.

Issues: i) When a person falls within the definition of a necessary party or proper party, whether he can be added as a party in a lis by a court, even without filing of a formal application in that regard?
ii) Whether according to section 4(1) of the Punjab Regularization of Service Act 2018, the case of a contract employee, appointed on the recommendations of the PPSC, is to be submitted to the competent authority for regularization?
iii) Whether Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 mandates that every citizen should be dealt with in accordance with law?

iv) Whether Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 provides shield against any kind of discrimination by the authorities at the helm of affairs of the government or its institutions?

v) Whether mere pendency of a complaint/application and that too by a co-employee, can be used to deny a vested right of a government servant whose performance otherwise has been assessed satisfactory?

vi) Whether putting up the case of the petitioner for regularization prior the expiry of extended period of contract has created legitimate expectancy in the mind of petitioner for regularization of his service?

Analysis: i) The sole reason advanced by the applicant, in support of this application, is that he filed the connected petition prior to filing of this petition, thus, he is a necessary party. There is no cavil with the proposition that when a person falls within the definition of a "necessary party" or "proper party", he can be added as a party in a lis by a court, even without filing of a formal application in that regard. Since the applicant has no concern with prayer made by the petitioner in this petition, thus, the applicant is neither a necessary nor proper party.

ii) Section 4 of the Act 2018 deals with procedure relating to regularization of services of a contract employee. According to subsection (1) of the afore-quoted provision, the case of a contract employee, appointed on the recommendations of the PPSC, is to be submitted to the competent authority for regularization. Insofar as matter of the petitioner is concerned respondent No.4 put up the matter of the petitioner for regularization before respondent No.2 with positive note but instead of regularization of services of the petitioner, respondent No.2 referred matter to different subordinates for inquiry/opinion in utter disregard to section 4 ibid. The matter did not end there as respondent No.2 did not regularize the services of the petitioner despite favourable recommendations by the authorities to whom matter was referred by him. This fact alone is sufficient to believe that respondent No.2 failed to perform his duties in line with the provisions of section 4 ibid.

iii) It is important to mention over here that Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 mandates that every citizen should be dealt with in accordance with law. Undeniably, the relevant law in the matter of the petitioner was/is the Act, 2018 which envisages that a contract employee, who completes three years of service, is entitled to regularization but inaction on the part of respondent No.2 to regularize services of the petitioner in line with the provisions of the said enactment constitutes willful defiance of the fundamental right of the petitioner guaranteed under the aforereferred provision of the Constitution.

iv) It is relevant to note that Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 provides shield against any kind of discrimination by the authorities at the helm of affairs of the government or its institutions.

v) In the report and parawise comments, some of the respondents have adopted the plea that since certain complaints were filed against the petitioner, his services could not be regularized. The said stance of the department stands negated from

the contents of the report, submitted by the Deputy Secretary (A&L), wherein he concluded that the complaints, filed against the petitioner, were baseless and devoid of facts and endorsed the recommendations/proposals for regularization of services of the petitioner….. Even otherwise, mere pendency of a complaint/ application and that too by a co-employee, cannot be used to deny a vested right of a government servant whose performance otherwise has been assessed satisfactory.

vi) It has not been denied by respondents‟ side that prior to the expiry of extended period of contract the case of the petitioner for regularization was put up before the competent authority with positive note. In this backdrop, the case of the petitioner was also covered under the principle of legitimate expectancy.

Conclusion: i) When a person falls within the definition of a necessary party or proper party, he can be added as a party in a lis by a court, even without filing of a formal application in that regard.

ii) According to section 4(1) of the Punjab Regularization of Service Act 2018, the case of a contract employee, appointed on the recommendations of the PPSC, is to be submitted to the competent authority for regularization.

iii) Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 mandates that every citizen should be dealt with in accordance with law.

iv) Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 provides shield against any kind of discrimination by the authorities at the helm of affairs of the government or its institutions.

v) Mere pendency of a complaint/application and that too by a co-employee, cannot be used to deny a vested right of a government servant whose performance otherwise has been assessed satisfactory.

vi) Putting up the case of the petitioner for regularization prior the expiry of extended period of contract has created legitimate expectancy in the mind of petitioner for regularization of his service.

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16. **Lahore High Court**
Abdul Majid through Attorney Muhammad Azhar v. Anjum Akhtar
R.F.A.No.8633 of 2020
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1676.pdf

Facts: Through the instant Regular First Appeal against appellant challenged the dismissal of suit for recovery under Order XXXVII CPC.

Issues: i) What is the rule of caution for Appellate Court to allow additional evidence under Order XLI Rule 27 CPC?

ii) What is the requirement for a party which intends to bring additional evidence on record?

iii) When party should not be allowed by the Court to produce evidence at appellate stage?

iv) Whether shortcomings in the evidence of the rival party can extend any benefit to appellant?

Analysis: i) Furthermore, a bare perusal of the provisions contained in Rule 27 of the Order XLI, Code of Civil Procedure, 1908 would reveal that the appellate Court must be conscious while allowing a party to adduce additional evidence.
ii) A party which intends to bring additional evidence on record must convince the Court with proof that such party could not lead the evidence at proper stage due to some plausible reasons and sufficient cause.
iii) It is a well settled law that the party who had the opportunity to produce evidence in the trial Court but did not avail of the opportunity should not be allowed to improve its case by producing evidence at the appellate stage, as under the above mentioned provisions, a party cannot be allowed to fill up the lacunas at appellate stage, who has been unsuccessful in the trial Court.
iv) Furthermore, it is a settled principle of law that a party has to stand on his own legs and any shortcomings in the evidence of the rival party cannot extend any benefit to such party, so the arguments that the respondent has not proved his stance are repelled.

Conclusion: i) The Appellate Court must be conscious while allowing a party to adduce additional evidence under Order XLI Rule 27 CPC.
ii) See above analysis no. ii
iii) The party who had the opportunity to produce evidence in the trial Court but did not avail of the opportunity should not be allowed to improve its case by producing evidence at the appellate stage.
iv) A party has to stand on his own legs and any shortcomings in the evidence of the rival party cannot extend any benefit to such party.

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17. **Lahore High Court**
Mst. Anayat Bibi v. Muhammad Saleem (deceased) through L.Rs.
Civil Revision No.72163 of 2022
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1683.pdf

Facts: Predecessor in interest of the respondents instituted a suit for specific performance of agreement to sell, possession and permanent injunction against the petitioner. The trial Court and the appellate Court ruled out in favour of the respondents; hence, the instant Revision Petition.

Issues: i) What if the foundational elements for a transaction like time, date, place, names of witnesses are missing in the case?
ii) Who is responsible to produce marginal witnesses?
iii) Whether the court is bound to grant the decree of specific performance as it is lawful discretionary relief?

iv) Whether the High Court has power to set aside the concurrent findings of the courts below?

Analysis: i) There is no detail as to time, date, place and names of witnesses in whose presence such bargain was struck in between the parties. Meaning thereby, the foundational elements for a transaction are missing in this case and when the position is as such, the discretionary decree for specific performance can be denied.
ii) In order to prove a document, it is responsibility of the beneficiary to produce two marginal witnesses of the same.
iii) Jurisdiction to decree a suit for specific performance is purely discretionary and the Court is not bound to grant such relief merely because it is lawful to do so. Such discretion of the Court is not arbitrary but is based on sound and reasonable principles.
iv) High Court has ample powers under section 115, Code of Civil Procedure, 1908 to set aside concurrent findings when the same suffer from misreading, non-reading of evidence and patent error of law.

Conclusion: i) If the foundational elements for a transaction are missing in the case the discretionary decree for specific performance can be denied.
ii) In order to prove a document, it is responsibility of the beneficiary to produce two marginal witnesses of the same.
iii) The Court is not bound to grant such discretionary relief merely because it is lawful to do so.
iv) High Court has ample powers under section 115, Code of Civil Procedure, 1908 to set aside concurrent findings when the same suffer from misreading, non-reading of evidence and patent error of law.

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18. **Lahore High Court**
Muhammad Azam v. Province of the Punjab through District Collector & others
Civil Revision No.21823 of 2024
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1690.pdf

Facts: Civil Revision has been filed assailing the judgment/decree of the learned appellate Court which while accepting the appeal, set aside the judgment and decree passed by the learned trial Court.

Issues: (i) Basic ingredients for a valid gift.
(ii) Permissibility of leading of evidence beyond pleadings.
(iii) Ingredients of Oral Gift and criteria for proving mutation passed on the basis of oral gift.
(iv) Whether the petitioner can take benefit from the shortcomings in the evidence of opposing side or he has to stand on his own legs?

(v) Limitation in inheritance matters.
(vi) In case of inconsistency between the findings of the learned trial Court and the learned Appellate Court, which of the findings must be given preference?

Analysis: (i) The basic ingredients for a valid gift are: offer, acceptance and delivery of possession.
(ii) A party cannot lead any evidence beyond its pleadings.
(iii) Oral gift has two parts namely: the fact of the oral gift which has to be independently established by proving through cogent and reliable evidence the three necessary ingredients of a valid gift as noted above and secondly mutation on the basis of an oral gift has to be independently established and proved by adopting procedure provided in the Land Revenue Act, 1967 and the Rules framed thereunder as well as the evidentiary aspects of the same in terms of the Qanune-Shahadat Order, 1984.
(iv) Petitioner cannot take benefits from the shortcomings in the evidence of respondents rather he had to stand on his own legs.
(v) In the matter with regards to inheritable property the question of limitation does not arise.
(vi) It is a settled principle, by now, that in case of inconsistency between the findings of the learned trial Court and the learned Appellate Court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary.

Conclusion: (i) See analysis part above.
(ii) See analysis part above.
(iii) See analysis part above.
(iv) Petitioner cannot take benefits from the shortcomings in the evidence of respondents rather he had to stand on his own legs
(v) In the matter with regards to inheritable property the question of limitation does not arise.
(vi) See analysis part above.

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19. **Lahore High Court**
Muhammad Umar Farooq v. Irshad Bibi
Civil Revision No.13865 of 2024
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1697.pdf

Facts: The respondent instituted a suit for declaration against the present petitioner to the effect that she is an old aged widow and illiterate; that the petitioner in connivance with the revenue staff got transferred her agricultural land without knowledge of the respondent/ plaintiff. The suit was contested by the petitioner. The trial Court decreed the suit in favour of the respondent. The petitioner being aggrieved preferred an appeal which was dismissed. Hence, the instant Revision petition has been filed.

Issues: i) Whether an old and illiterate lady is entitled to the same protection which is available to the Parda observing lady under the law, and she must have independent advice to be fully aware and cognizant of the nature of the transaction?

ii) Whether adverse presumption as per mandate of article 129(g) of Qanun-e-Shahadat, 1984 can be drawn when the best evidence has been withheld by any party?

iii) Whether a revisional Court can upset a finding of fact of the Court(s) below under section 115, Code of Civil Procedure, 1908?

Analysis: i) As to transaction regarding property with a pardanasheen, infirm/old and illiterate lady, the Supreme Court of Pakistan in a judgment reported as Phul Peer Shah v. Hafeez Fatima (2016 SCMR 1225) has given the parameters and conditions to be fulfilled in a transparent manner… Moreover, this Court has held that old and illiterate ladies are entitled to the same protection which is available to the Parda observing lady under the law… However, in the present case, no such evidence showing that the respondent was having an independent advice and was fully aware and cognizant of the nature of the transaction, was brought on record by the petitioner.

ii) The petitioner could not produce the witnesses in whose presence the disputed mutation was entered into revenue record and the revenue officer, who attested the mutation was also not produced. So adverse presumption as per mandate of article 129(g) of Qanun-e-Shahadat Order, 1984 arises against the petitioners that had the said witnesses been produced in the witness box, they would not have supported the stance of the petitioner.

iii) …when impugned judgments and decrees, passed by the learned Courts below and evidence of the parties are put in juxtaposition, it gleans out that evidence of the parties has minutely been scanned and appraised/ appreciated while recording the judgments by learned Courts below; no misreading and non-reading of evidence has surfaced. Therefore, the learned Courts below have reached to the conclusion in a proper way, concurrently, which cannot be interfered with in exercise of revisional jurisdiction under section 115, Code of Civil Procedure, 1908…

Conclusion: i) An old and illiterate lady is entitled to the same protection which is available to the Parda observing lady under the law, and she must have independent advice to be fully aware and cognizant of the nature of the transaction.

ii) Adverse presumption as per mandate of article 129(g) of Qanun-e-Shahadat, 1984 can be drawn when the best evidence has been withheld by any party.

iii) A revisional Court cannot upset a finding of fact of the Court(s) below under section 115, Code of Civil Procedure, 1908 unless that finding is the result of misreading, non-reading, or perverse or absurd appraisal of some material evidence or suffering from a jurisdictional error.

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20. **Lahore High Court**
Ali Zain v. The State, etc.
Crl. Revision No.23371 of 2024
Miss. Justice Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2024LHC1743.pdf

Facts: Through instant Criminal Revision under section 439 of Cr.P.C. read with section 435 Cr.P.C. the petitioner prayed for setting aside the order passed by the Additional Sessions Judge whereby the petitioner was not allowed to put question to draftsman regarding the relevancy of site plan of place of recovery of weapon of offence.

Issue: Whether a witness who is not a scriber of the site plan can be considered as an attesting witness?

Analysis: If a witness who is not the author of the site plan nor the witness on whose pointing site plan was prepared. …had not prepared the site plan of the place of recovery of the weapon of the offence, nor did he remain a witness or, under his instructions, have the site plan prepared… is not a scriber of the site plan cannot be considered as an attesting witness.

Conclusion: If witness is not a scriber of the site plan cannot be considered as an attesting witness.

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21. **Lahore High Court**
Zafar Iqbal v. Muhammad Amjad Shami
C.R. No.1527-D of 2018
Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2024LHC1646.pdf

Facts: This Civil Revision is directed against the judgments and decrees passed by the learned Civil Judge and the learned Additional District Judge. By virtue of the formal judgment a suit for possession through pre-emption filed by the petitioner against the respondent has been dismissed and through the latter the same has been upheld.

Issues: i) Whether it is mandatory to mention categoric details qua time, date and place in plaint of suit for pre-emption and prove the same through evidence?
ii) Whether depositions made by witnesses beyond the scope of pleadings can be read into?
iii) Whether absence of names of witnesses of Talb-e-Ishhad in contents of plaint is fatal to suit for pre-emption?
iv) Who has the burden to prove if it is disputed by the vendee that he never received notice of Talb-e-Muwathibat?
v) How to prove issuance and service of notice of Talab-e-Ishhad?
vi) What will be effect of non-production of a document which was mandatory to prove a fact?

vii) Whether notice of Talb-e-Ishhad can be served upon another person instead of serving on vendee?

Analysis: i) The Supreme Court of Pakistan while dealing with the question of mentioning and proving the time, date and place where pre-emptor got the information of sale and made Talb-e-Muwathibat held in different case laws that while filing a suit for pre-emption it is mandatory for the plaintiff to mention in the plaint categoric details qua time, date and place and thereupon, prove the same through his evidence…

ii) Even otherwise the depositions of the petitioner and his witnesses are beyond the scope of pleadings as the contents of the same qua the place of making Talb-e-Muwathibat as explained in paragraph Nos. 7 & 8 supra are different, hence, the same cannot be read into.

iii) It is also evident that although petitioner has mentioned the names of witnesses of Talb-e- Muwathibat, however, he has failed to mention the names of witnesses of Talb-e-Ishhad, therefore, in view of the judgments of the Supreme Court of Pakistan wherein, it has been held that conspicuous absence of names of witnesses of Talb-e-Ishhad in the contents of the plaint is fatal to the suit for preemption. In this backdrop, since the names of witnesses of Talb-e-Ishhad were not mentioned in the plaint, therefore, the same is fatal for the suit…

iv) Under section 13 of the Act, for performance of Talab-e-Ishhad, it is mandatory for the pre-emptor that he within two weeks of Talb-e-Muwathibat, send notice in writing attested by two truthful witnesses under registered cover acknowledgment due to the vendee. In case, it is disputed by the vendee that he never received the notice, the burden is on the pre-emptor to prove the issuance as well as service of the notice.

v) In order to prove issuance and service of notice of Talab-e-Ishhad, a pre-emptor has to produce/prove the following: a) Notices of Talb-e-Ishhad; b) Its two truthful attesting witnesses; c) Postal receipts; d) Acknowledgement due; e) Postman, who affected the service (both acceptance or refusal).

vi) Since the petitioner has failed to produce the acknowledgement due card through which the alleged notice was sent to and received, hence, he has failed to prove this Talb. In view of the fact that this document, which was mandatory to prove the said Talb, has not been produced, therefore, adverse inference under Article 129(g) of the Qanun-e-Shahdat Order 1984 has to be drawn against the petitioner.

vii) It shall also be apposite to mention here that admittedly respondent was out of country when the notice of Talb-e-Ishhad was issued and instead of sending notice to him petitioner tried to serve the respondent through another person, however, he has not been able to prove that whether that another was the attorney of the respondent having the authority to receive the notice of Talb-e-Ishhad on his behalf. For the sake of argument if this is presumed that the said person was authorized to receive the notice, since the said fact has not been proved by the petitioner, hence, even otherwise, the service was not valid…

Conclusion: i) It is mandatory to mention categoric details qua time, date and place in plaint of suit for pre-emption thereupon, prove the same through his evidence.
ii) Depositions made by witnesses beyond the scope of pleadings cannot be read into.
iii) If the names of witnesses of Talb-e-Ishhad are not mentioned in the plaint, the same is fatal for the suit for pre-emption.
iv) See above analysis no. iv.
v) See above analysis no. v.
vi) See above analysis no. vi.
vii) Notice of Talb-e-Ishhad can be served upon vendee or any person duly athoturized by him.

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22. **Lahore High Court**
Fayyaz-ul-Hassan Anwar v. Mst. Shehla Khalid etc.
Writ Petition No. 46618 of 2021
Mr. Justice Masud Abid Naqvi
https://sys.lhc.gov.pk/appjudgments/2024LHC1493.pdf

Facts: Brief facts of this writ petition are that father filed an application under Section 25 of the Guardians & Wards Act, 1890 for custody of the minor, which was contested by mother. Learned Guardian Court issued a schedule of meeting with minor and dismissed the petition as withdrawn. Feeling aggrieved, mother filed an appeal and learned Additional District Judge, partially allowed the appeal and issued new schedule for visitation of minor with the father. Being dissatisfied, the father has filed the instant writ petition and challenged the validity of impugned judgment passed by the learned Appellate Court.

Issues: i) Whether a non-custodial parent has all the rights to meet his/her children and right of access to his/her minor children can be denied or a non-custodial parent will be considered as an alien to his/her children?
ii) Whether while deciding about the visitation schedule, the paramount consideration is the welfare of minor?

Analysis: i) It is a settled proposition of law that a non-custodial parent has all the rights to meet his/her children and neither right of access to his/her minor children can be denied nor a non-custodial parent will be considered as an alien to his/her children. A minor not only needs love, affection, care and attention of a mother but also the father and negating a non-custodial parent of his/her right to meet his/her minor children would lead to emotional deprivation. A non-custodial parent has an inherent right to effectively participate in upbringing of minor and that cannot be achieved without properly chalked visitation schedule. Due to lack of interaction with non-custodial parent, the children start forgetting and in many cases disliking the non-custodial parent and this phenomenon has been named as Parental Alienation Syndrome by the psychiatrists. Hence, visiting schedule significantly bridges a relationship between the minor children and a non-

custodial parent. Using visitation rights, a non-custodial parent can not only recolour the emotions of minor children for him/her but also reinvigorate the bond of love and affection with minor.

ii) Although, the law on the subject of visitation is contained in the Guardian & Wards Act (VIII of 1890) but without any guidelines about the duration, frequency of those visits of minor and about the visitation schedule, hence, while deciding about the visitation schedule, the paramount consideration is the welfare of minor.

Conclusion: i) A non-custodial parent has all the rights to meet his/her children and neither right of access to his/her minor children can be denied nor a non-custodial parent will be considered as an alien to his/her children.

ii) While deciding about the visitation schedule, the paramount consideration is the welfare of minor.

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23. **Lahore High Court**
Ch. Bilal Ejaz v. Election Commission of Pakistan & others
W.P No. 16416 of 2024
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2024LHC1604.pdf

Facts: The petitioner and respondent No.3 were candidates in the general elections for a seat of National Assembly. The petitioner won elections and was notified as returned candidate of National Assembly. The respondent no. 03 filed application for recounting of ballot papers to returning officer which was dismissed and respondent no. 03 filed an appeal before ECP which was accepted and as a result a recount was held and respondent no. 03 was declared as the successful candidate, hence, this Constitutional Petition.

Issues: i) Whether ECP can take any action after the election process has been completed and issuance of notification of successful candidate in official gazette?

ii) What do words "save as otherwise provided" means in section 8 of Elections Act, 2017?

iii) In what situation, ECP can order recounting of ballot paper under section 95 of Elections Act, 2017?

iv) Whether ECP does have power to review its own declaration of results in official gazette?

Analysis: i) Section 8 of the 2017 Act came under discussion before the Supreme Court of Pakistan in C.P No.142 of 2019 Zulfiqar Ali Bhatti v. Election Commission of Pakistan and others in which the Supreme Court of Pakistan alluded to the true construction to be put on Article 218 (3) of the Constitution as well as section 8(c) of the 2017 Act. The distilled essence of the observations at paras 18-21 of supra judgment is that the Supreme Court was of the clear opinion that exercise of powers by ECP both under Article 218 of the Constitution as well as section 8 of the 2017 Act could be done at any stage of the election process but not after its

completion. The completion of election process, in turn, would be the issuance of notification regarding returned candidates in the official gazette under Section 98 of the 2017 Act when the election process would be deemed to have been completed. This is also mentioned in paragraph 20 of the Supreme Court's judgment. In a nub, ECP would become functus officio in all such matters after which the issues can only be raised through an election petition before the Election Tribunal.

ii) It will be noted that section 8 starts with these words "save as otherwise provided" which evidently mean that if there is anything specifically provided in the statute itself, the Commission will constrain itself and not exercise jurisdiction in respect of such matters under the cloak of section 8 and the powers conferred thereby.

iii) Sub-section (6) of section 95 is crucial in the present context and confers a power on ECP to direct the Returning Officer to recount the ballot papers before conclusion of consolidation proceedings. The intention, in my opinion, is clear and unequivocal. Firstly, a specific provision exists in the 2017 Act conferring powers on ECP to order the recount of ballot papers. Second and more importantly it has to be done before conclusion of the consolidation proceedings. If this power is not exercised by ECP within the contours mentioned in sub-section (6) of section 95, it cannot thereafter proceed to exercise such power on the misplaced notion that it can do so by invoking provisions of section 8 of the 2017 Act. In such matters, therefore, ECP is constrained by section 95(6) and cannot exceed the jurisdiction so conferred. The indubitable inference would be that in matters of recount of ballot papers, ECP can only act under Section 95(6) and that too before consolidation proceedings are concluded. If that does not happen, ECP cannot use section 8 to circumvent the law to achieve indirectly what cannot be done directly.

iv) The impugned order subsequently passed by ECP would be tantamount to review of its own declaration of results in the official gazette and this is an additional reason why ECP should not have exercised its jurisdiction in the present case after declaration of results by it. Suffice to say that ECP does not have power of review.

Conclusion: i) ECP cannot take any action after the election process has been completed and issuance of notification of successful candidate in official gazette.

ii) See under analysis no. 02.

iii) Sub-section (6) of section 95 confers a power on ECP to direct the Returning Officer to recount the ballot papers before conclusion of consolidation proceedings.

iv) ECP does not have power to review its own declaration of results in official gazette.

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24. **Lahore High Court**
Abdul Ghafoor and another v. Babar Sultan Jadoon and 3 others,
Regular First Appeal No.71 of 2021
Mr. Justice Mirza Viqas Rauf, Mr. Justice Jawad Hassan.
https://sys.lhc.gov.pk/appjudgments/2024LHC1561.pdf

Facts: The appellant and his co-owner respondent, with regard to their jointly owned commercial plot, executed general attorney in favour of one of the other respondents with an event dated agreement to sell. In support of this, the attorney completed registered sale deeds on behalf of other respondents, who happen to be his biological brothers. Being offended with the execution of sale deeds, the appellant instituted a suit seeking cancellation of sale deeds and revocation of general power of attorney along with recovery of an amount coupled with damages and possession of suit plot. The said suit of the appellants was dismissed, hence this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908.

Issues: i) What is distinction between a suit under section 39 of the Specific Relief Act, 1877 for cancellation of document and suit under section 42 of Act ibid seeking declaration?
ii) How the applicability of Article 91 is different from Article 120 of the Limitation Act, 1908, in terms of a suit for cancellation and suit for declaration?
iii) What is scope and import of Section 202 of the Contract Act, 1872?

Analysis: i) Section 39 is part of Chapter V of the Specific Relief Act, 1877 which deals with the cancellation of instruments, whereas Chapter VI of the Act ibid relates to declaratory decrees and Section 42 forms part of the same. The notable distinction between the above two provisions of the Act ibid is that Section 39 presupposes that the document sought to be cancelled through the suit is void or voidable qua the plaintiff, whereas in terms of Section 42 a person entitled to any character or to any right to any property being offended from the denial of such character or right or title from any other person, seeks a declaration of his status or right without asking for cancellation in furtherance of such declaration. The prayer for cancellation need not be specifically made but is inherent and flows from the relief regarding the prayer for adjudging the document void. Section 39 of the Act does not contain provision similar to the proviso to section 42 of the Act which bars the Court from granting a declaration if the plaintiff being entitled to further relief, omits to do so.
ii) The applicability of Articles 91 and 120 of the Limitation Act, 1908 is dependent upon the actual nature of the suit. Article 91 of the Act ibid provides limitation of three years from the date when the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him. If the plaintiff is not bound by the document, or if he is not claiming under the same, and the substantial relief prayed for by him is not the cancellation or setting aside of the instrument, then the suit is not governed by Article 91 of the Limitation Act 1908.

Article 91 of the Limitation Act will not apply when the cancellation of the instrument is merely incidental or ancillary to the substantial relief claimed by the plaintiff. In fact, where the case is basically and primarily covered by section 39 of the Specific Relief Act, 1877, then the Article 91 of the Limitation Act 1908 shall be attracted.

iii) In general rules, whenever an attorney intends to alienate or transfer the property subject matter of the deed of attorney in favour of his near relation or kith and kin, he has to seek specific permission from the principal to that effect before entering into such transaction. Section 202 of the Contract Act, 1872 is an exception and departs from these general rules. Power of attorney can either be general or special but in all circumstances, it must be strictly construed in the light of its recitals to ascertain the manner of exercise of the authority in relation to the terms and conditions specified in the instrument. A principal can revoke the deed of attorney at any time. However, when the agent has himself interest in the property, which forms the subject matter of the agency, the agency cannot in absence of an express contract, be terminated to the prejudice of such interest.

Conclusion: i) The distinction between a suit under section 39 of the Act seeking cancellation of a document and a suit under section 42 seeking declaration is quite obvious as in the former case the plaintiff does not seek a declaration regarding his title but only about invalidity of a deed, while in the latter case relief asked for is regarding the title of the plaintiff or right in any property or status.

ii) The suit for cancellation would be governed under Article 91 of the Limitation Act 1908 and a suit for declaration under Section 42 of the Act ibid would certainly be governed by Article 120 of the Act ibid.

iii) Section 202 of the Contract Act, 1872 would only come into play when an interest in the property is created prior to the execution of deed of attorney.

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25. **Lahore High Court**
M/s Al-Harmain & Co. & others v. MCB Bank Limited
EFA No.26 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr.Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2024LHC1518.pdf

Facts: The judge banking court while executing a decree, issued non bailable warrants of arrest as well as blocked Computerized National Identity Cards of the appellants. Now, they have assailed vires of order before High Court through this Appeal.

Issues: i) What are the powers of banking court while executing a decree under the Financial Institutions (Recovery of Finance) Ordinance, 2001?

ii) Whether National Database and Registration Authority has power to cancel, impound or confiscate the Computerized National Identity Card of a person?

iii) Whether the need for Computerized National Identity Card has increased manifold?

iv) Whether CNIC is essential for enjoyment of a number of fundamental rights?
v) What are the powers of executing court under Order XXI, Rule 37, 40 of C.P.C, where an application for arrest and detention of judgment debtor is made?

Analysis: i) Section 19 of the FIO, 2001 mainly provides that mortgaged, pledged or hypothecated property and other assets of the judgment-debtor would be the subject matter of the execution. Section 19(2) provides various modes / actions to be taken by the Banking Court to execute a decree coupled with powers given in various sub-sections of section 15 of the FIO, 2004 and bestows it with powers of Executing Court provided in the Code of Civil Procedure, 1908 or any other law for the time being in force.

ii) Section 18(1) of the National Database and Registration Authority Ordinance, 2000 empowers NADRA to cancel, impound or confiscate a CNIC, after giving notice in writing to the holder of CNIC to show cause as to why such order should not be passed. Section 18(2) enumerates the instances / circumstances in which such action can be taken, which includes (a) the card has been obtained by a person who is not eligible to hold such card, by posing himself as eligible; (b) more than one cards have been obtained by the same person on the same eligibility criteria;(c) the particulars shown on the card have been obliterated or tampered with; or (d) the card is forged. Apparently, no instance of blocking a CNIC, pertinently while conducting executing proceedings by a court of law, is visible in the afore-referred provision. Section 18(3) provides right of appeal to aggrieved person before the Federal Government against the order passed against him and again notice providing of hearing is expedient before deciding the appeal. Legislature has made it obligatory upon the NADRA authority as well as the appellate authority to have given a fair opportunity of hearing to lead the defence to the affected person in terms of Section 18.

iii) The need for the CNIC has increased manifold. Almost every government and private organization requires CNIC from a person before attending them. CNIC is also expedient to get admission in higher education programs, apply for a job, open a bank account, get a driving license or arms license, get utility connections, purchase railway and air tickets, execute any instrument, stay in a hotel or lodge, appear in a court proceedings and enter in certain buildings and premises etc.

iv) The CNIC is essential for enjoyment of a number of fundamental rights; hence, a person cannot be deprived of it without due process. The superior Courts have expanded the right to life over time (provided in Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973) and held that it includes the right to legal aid; the right to speedy trial; the right to bare necessities of life; protection against adverse effects of electro-magnetic fields; the right to pure and unpolluted water; the right to access to justice; the right to livelihood; the right to travel; the right to food, water, decent environment, education and medical care. Personal identity of a person comprises all those aspects of his profile which are significant to him. Right to identity is also associated to the right to life (Article 9) and would also be read into Article 14, which guarantees dignity of man.

v) According to the provisions of Order XXI, Rules 37 C.P.C. where an application for the arrest and detention is made, the Court instead of issuing warrant for arrest, may issue a notice calling upon the judgment-debtor to appear on a date specified in the notice and show cause as to why he should not be detained in prison. If the judgment-debtor does not appear in response to notice, the Court shall issue warrant for the arrest of judgment-debtor as provided under Rule 37(2). Rule 40 CPC provides that where the judgment- debtor appears in the Court in pursuance of the notice or is brought before the Court after being arrested, the Court shall hear the decree-holder, take all such evidence as may be produced by him in support of his application and shall then give judgment-debtor an opportunity of showing cause why he should not be detained in prison and that pending conclusion of inquiry the Court, in its discretion, order to release the judgment-debtor on furnishing of security to the satisfaction of the Court for his appearance, when required, and that on conclusion of inquiry, the Court can subject to the satisfaction of provisions of Section 51, C.P.C., make an order in respect of detaining the judgment-debtor in prison. These rules and procedure therein have been considered in a number of cases and the consistent view taken is that before passing an order for arrest and detention of judgment-debtor, the Court shall after due inquiry and affording opportunity of evidence to parties, determine that the pre-conditions for the issuance of such directive have been satisfied by the decree-holder.

Conclusion:

i) Section 19 of the FIO, 2001 mainly provides that mortgaged, pledged or hypothecated property and other assets of the judgment-debtor would be the subject matter of the execution.

ii) Section 18(1) of the National Database and Registration Authority Ordinance, 2000 empowers NADRA to cancel, impound or confiscate a CNIC, after giving notice in writing to the holder of CNIC to show cause as to why such order should not be passed.

iii) The need for the CNIC has increased manifold.

iv) The CNIC is essential for enjoyment of a number of fundamental rights.

v) According to the provisions of Order XXI, Rules 37 C.P.C. where an application for the arrest and detention is made, the Court instead of issuing warrant for arrest, may issue a notice calling upon the judgment-debtor to appear on a date specified in the notice and show cause as to why he should not be detained in prison.

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26. **Lahore High Court**
United Bank Ltd. v. Muhammad Amjad Hayat Khan
EFA No.41 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC1632.pdf

Facts:

Through this Execution First Appeal (EFA) vires of order passed by learned Judge Banking Court has been challenged whereby appellant's application under

Section 47 read with Sections 151/152 CPC and Section 19(7) of the Financial Institutions (Recovery of Finances) Ordinance ("FIO"), 2001 praying for revisiting of judgment & decree dated 03.03.2020 was dismissed.

Issues: (i) Whether cost of funds can be awarded to a customer where a customer establishes a breach of obligation on the part of the financial institution?
(ii) Doctrine of Casus Omissus
(iii) Whether questions relating to the executability of an order or decree can be raised even in execution proceedings?

Analysis: (i) Cost of funds is basically the cost that a financial institution is entitled to recover from the borrower on account of funds which as per the terms of the 'Finance' or the law ought to have been in the custody of a financial institution but happened to be in the custody of the customer after default on the rationale that the financial institution has been deprived from placing the funds somewhere else for its financial benefit which is the core business of a financial institution. Since cost of funds is attached to the provisions of funds, therefore, cost of funds is not awarded to a customer even where a customer establishes a breach of obligation on the part of the financial institution. Cost of funds is granted only to a financial institution on the principle that funds are only provided by a financial institution and not by a customer. Banking Court under the provisions of Section 3(2) of the FIO, 2001 is empowered to award cost of funds in favour of financial institutions and such privilege or benefit had not been conferred by statute to the customer.

(ii) The said principle provides that, where the legislature has not provided something in the language of the law, the Court cannot travel beyond its jurisdiction and read something into the law as the same would be ultra vires the powers available to the Court under the Constitution and would constitute an order without jurisdiction. the Courts generally abstained from providing 'casus omissus' or omissions in a statute, through construction of interpretation. The Court observed that the exception to such rule was, when there was a self-evident omission in a provision and the purpose of the law as intended by the legislature could not otherwise be achieved, or if the literal construction of a particular provision led to manifestly absurd or anomalous results, which could not have been intended by the legislature. The Court further held that such power, however, was to be exercised cautiously, rarely and only in exceptional circumstances.

(iii) Executing Court under the provisions of Section 47 CPC can question executability of decree. There is no cavil to the proposition that questions relating to the executability of an order or decree can be raised even in execution proceedings and it is open to the party against whom it is sought to be executed to show that it is null and void or had been made without jurisdiction or that it is incapable of execution. Needless to observe that it is not for the Executing Court to decide whether the decree passed is legal or illegal or whether it is erroneous or

not, but it is open to the Executing Court to consider whether the decree sought to be executed is void or not.

Conclusion: (i) Cost of funds is granted only to a financial institution on the principle that funds are only provided by a financial institution and not by a customer.
(ii) The Courts should refrain from supplying an omission in the statute because to do so steered the courts from the realms of interpretation or construction into those of legislation.
(iii) Executing Court under the provisions of Section 47 CPC can question executability of decree.

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27. **Lahore High Court**
Munawar Hussain Toori v. Government of Pakistan, Establishment Division, Cabinet Secretariat, Islamabad through its Secretary & others
Writ Petition No.15368 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC1625.pdf

Facts: The petitioner through this Constitutional Petition has sought direction to the respondents to pay the perks and privileges / pay and allowances to petitioner as are being paid to the other Members of the National Industrial Relations Commission, especially the District & Sessions Judges in other provinces.

Issues: i) Whether the constitution requires from the public authorities to act justly, fairly, equitably and reasonably?
ii) Whether Article 25 of the Constitution allows for differential treatment of persons who are not similarly placed under a reasonable classification?
iii) What are the essential requirements to establish a reasonable classification based on intelligible differentia in view of Article 25 of the Constitution?
iv) Whether Article 25 of the constitution forbids class legislation?

Analysis: i) The Constitution requires that public functionaries, deriving authority from or under the law, are obliged to act justly, fairly, equitably, reasonably, without any element of discrimination and squarely within the parameters of law, as applicable in a given situation. Any deviation therefrom can be corrected through appropriate orders under Article 199 of the Constitution.
ii) Although Article 25 of the Constitution allows for differential treatment of persons who are not similarly placed under a reasonable classification, however, in order to justify this difference in treatment the reasonable classification must be based on intelligible differentia that has a rational nexus with the object being sought to be achieved.
iii) In order to establish a reasonable classification based on intelligible differentia, the differentiation must have been understood logically and there should not be any artificial grouping for specific purpose causing injustice to other similarly placed individuals. Concept of reasonableness is rationally a fundamental component of equality or non-arbitrariness. Intelligible differentia

distinguishes persons or things from the other persons or things, who have been left out. Equality clause does not prohibit classification for those differently circumstanced provided a rational standard is laid down. Law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25.

iv) Article 25 forbids class legislation but it does not forbid classification or differentiation which rests upon reasonable grounds of distinction. The classification however must not be arbitrary, artificial or evasive but must be based on some real and substantial bearing, a just and reasonable relation to the object sought to be achieved by the legislation. In order to pass the test of reasonableness there must be a substantial basis for making the classification and there should be a nexus between the basis of classification and the object of action under consideration based upon justiciable reasoning.

Conclusion: i) The Constitution requires that public functionaries, deriving authority from or under the law, are obliged to act justly, fairly, equitably, reasonably, without any element of discrimination and squarely within the parameters of law.

ii) Article 25 of the Constitution allows for differential treatment of persons who are not similarly placed under a reasonable classification, however, in order to justify this difference in treatment the reasonable classification must be based on intelligible differentia.

iii) In order to establish a reasonable classification based on intelligible differentia, the differentiation must have been understood logically and there should not be any artificial grouping.

iv) Article 25 of the constitution forbids class legislation but it does not forbid classification or differentiation which rests upon reasonable grounds of distinction.

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28. **Lahore High Court**
Muhammad Akram Sohail v. Govt. of the Punjab through Secretary Forest Department, Punjab, Lahore & others
W. P. No.1532 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC1923.pdf

Facts: Through instant Petition, petitioner assailed vires of order, passed by respondent No. 2 / Divisional Forest Officer, whereby inquiry proceedings were initiated against petitioner under Section 3 of the Punjab Employees, Efficiency, Discipline and Accountability Act, 2006 on the charges of inefficiency and misconduct, with the allegation that during petitioner's posting as Forest Guard, a damage of 466 trees worth was sustained in his beat / block i.e. Dad Block.

Issues: i) Whether an employee who had been exonerated in the inquiry proceedings

initiated against him can be proceeded again against same charges and whether the authority has power under the provisions of PEEDA, 2006 to review his earlier order especially when the earlier order on the same charges had attained finality?

ii) Where an employee has undergone the process of earlier inquiry and subsequent inquiry proceedings are illegal and unlawful, whether the same can be questioned before High Court when appeal before the Service Tribunal lies only against final order?

Analysis: i) The matter was one and the same and the competent authority was also the same. A detailed inquiry ended in petitioner's support and upon receipt of inquiry report, three options or courses of action were available with the competent authority, who could either exonerate petitioner or punish him or order a de novo inquiry, if it was satisfied that inquiry proceedings were not conducted lawfully or on merits. In this case, the competent authority exonerated petitioner, thus it could not initiate fresh or de novo inquiry proceedings against him. Since there is no provision in the relevant law which empowered respondent No. 2 to review his own previous decision to withdraw the disciplinary proceedings initiated against petitioner, I am of the view that the impugned order to re-initiate inquiry proceedings against petitioner is without lawful authority. The competent authority cannot reopen the matter against the petitioner as it is settled law that one cannot be vexed twice for the same cause….. Needless to observe here that once disciplinary proceedings were dropped by the respondent-authority, there was no occasion to again proceed against petitioner for same charges. Such act of authorities is against the principles of natural justice as initiating fresh proceedings did not mean that civil servant should be proceeded again on the same charges, which were not found correct in earlier proceedings. Inquiry can only be conducted if there are charges other than the earlier charges on which show cause notice / disciplinary proceedings was withdrawn / dropped.

ii) So far as argument of learned Law Officer that instant petition is not maintainable against initiation of inquiry proceedings is concerned, suffice it to say that since petitioner has undergone the process of earlier inquiry and subsequent inquiry proceedings are illegal and unlawful under well-settled principles of law, thus, the same can be questioned before this Court, especially when appeal before the Service Tribunal lies only against final order.

Conclusion: i) An employee who had been exonerated in the inquiry proceedings initiated against him cannot be proceeded again against same charges and the authority has no power under the provisions of PEEDA, 2006 to review his earlier order especially when the earlier order on the same charges had attained finality.

ii) Where an employee has undergone the process of earlier inquiry and subsequent inquiry proceedings are illegal and unlawful, the same can be questioned before High Court especially when appeal before the Service Tribunal lies only against final order.

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29. **Lahore High Court**
Istikhar @ Iftikhar v. The State etc.
Criminal Appeal No.56786 of 2017
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2024LHC1763.pdf

Facts: Through this appeal under Section 410 Cr.P.C. appellant challenged the vires of judgment passed by the Additional Sessions Judge, in case in respect of an offence under Sections 376 PPC, whereby he was convicted and sentenced to imprisonment for life with fine.

Issues: i) What is the effect of promptness in lodging the FIR?
ii) What constitutes sexual intercourse, particularly in legal and medical contexts, considering factors like penile insertion, even if limited to the labial area, and the significance of hymen rupture?
iii) Whether overwhelming ocular and medical evidence can be discarded merely because of non-detection of seminal material in the vaginal swabs of victim?

Analysis: i) This promptness in lodging the crime report not only confirms presence of the eye witnesses at the spot but also excludes every hypothesis of deliberation, consultation and fabrication prior to the registration of the case.
ii) Learned defence counsel laid much emphasis that according to the opinion of Medical Officer vaginal area was intact, therefore, at the most it could be regarded as an attempt to commit the rape. I am not in agreement with the submission of the learned counsel for more than one reasons. *Firstly*, Section 375 PPC defined the "rape". Explanation 1 of the said section reads as under:- "*For the purpose of this section, "vagina" shall also include labia majora*" In the instant case Medical Officer has observed bruising upon perianal area alongwith tears of different sizes at different position, which when read in context with Explanation reproduced supra, fully constitute that the 'rape' was committed with the victim. *Secondly*, a Forensic Scientist Mr. C.K. Parikh in " Parikh's Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology at page 5.37 mentions as under:- *"Soon after the act, the torn margins are sharp and red, and bleed on touch".* Moreso, H M V Cox "Medical Jurisprudence and toxicology" (Seventh Edition) by Dr. PC Dikshit, Professor and Head of Forensic Sciences, Maulana Azad Medical College, New Dehli, explains the situation in Chapter of Sexual Offences at page 591 as under:- " *In case of incomplete penetration, the only sign which may be seen are reddening and inflammation of vestibule within the labia or a small tear of the posterior fourchette. There may also be contusion of the hymen.*" The situation when rape is committed with a child has been well explained in the above chapter in the following manner:- "*In the case of small children, the genital injuries found are either absolutely minimal or of such magnitude that one is unable to perform the examination without general unaesthetic. It must be remembered that it requires a great amount of force, exerted via penis, to effect full penetration into the small under-developed child,*

because of this many rapists of small children are satisfied to commit what is described as rape without full penetration." Further that; "*Bodily injuries, because of the lack of resistance by the child are usually absent in this type of case.*"
Furthermore, extent of penal insertion is highlighted in Simpson Forensic Medicine (Tenth Edition) by Bernard Knight in the following manner:- "*Sexual intercourse means nothing less than penile insertion, even if this is only just between the labia. Full penetration is not necessary and rupture of the hymen is irrelevant, but unless some degree of penile introduction can be proved, a charge of rape cannot be sustained and anything less is 'indecent assault.' An orgasm or ejaculation of semen is not relevant, only penetration.* (emphasis supplied)" The nature of injuries endured by the victim and described by the Medical Officer perfectly matched with the observations highlighted above and sufficient to attract the offence of 'rape' on the touchstone of penetration.
iii) Learned defence counsel also stressed that in the report of DNA analysis, no semen stain was detected, which is fatal for the prosecution. This submission is also not helpful for the defence for more than one reasons. Firstly, according to the Medical Officer, private area of the victim was washed prior to her examination, as such there seems no possibility of availability of semen at the time of examination. Secondly, detection of seminal material in the vaginal swabs of the victim is just a corroboratory piece of evidence and merely due to its non-detection the other overwhelming ocular and medical evidence cannot be discarded. (…) The child being in tender nobility is clinically established to have been violated, a circumstance that required no further corroboration. Negative reports do not reflect upon the veracity of prosecution case for reasons more than one. DNA profile generation though a most meticulous method with unfailing accuracy, nonetheless, requires an elaborate arrangement about storage and transportation of samples, a facility seldom available. Eve a slightest interference with the integrity of samples may alter the results of an analysis and thus, the fate of prosecution case cannot be pinned down to the forensic findings alone, otherwise, merely presenting a corroborative support, hardly needed in the face of overwhelming evidence, presented by the prosecution through sources most impeachable.

Conclusions: i) Promptness in lodging the crime report confirms presence of the eye witnesses at the spot and also excludes every hypothesis of deliberation, consultation and fabrication prior to the registration of the case.
ii) See above analysis no. ii.
iii) Detection of seminal material in the vaginal swabs of the victim is just a corroboratory piece of evidence and merely due to its non-detection the other overwhelming ocular and medical evidence cannot be discarded.

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30. **Lahore High Court**
Muhammad Saleem v. The State and another
Criminal Appeal No. 422/2023
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Sadiq Mahmud Khurram

https://sys.lhc.gov.pk/appjudgments/2024LHC1706.pdf

Facts: This Appeal is directed against the judgment handed down by the Additional Sessions Judge, in case FIR for an offence under section 377 of the Pakistan Penal Code 1860, whereby, the appellate was convicted and sentenced.

Issues: i) What does the term 'carnal intercourse' refer?
ii) Whether sections 375, 377, and 377A of PPC differ significantly in their focus, scope, and application?
iii) Whether a child can be a witness if he possesses the capacity and intelligence to understand and respond rationally to questions?
iv) Whether the court's satisfaction in terms of Article 3 of the QSO is merely a procedural formality?
v) Whether mere friendship or association is sufficient to discredit a witness?
vi) Whether the courts generally do consider the delay in making a report to the police material?
vii) Whether DNA's absence or negativity does automatically invalidate the prosecution's case if other evidence provides robust corroboration?

Analysis: i) The term "carnal intercourse" refers to sexual penetration, and "against the order of nature" is interpreted broadly to include any sexual acts other than heterosexual vaginal intercourse for procreation. This includes acts such as homosexual intercourse, bestiality, and certain types of heterosexual intercourse, like anal sex. Notably, the law does not distinguish between consensual and non-consensual acts, making both parties involved liable to prosecution. The explanation provided in the section clarifies that mere penetration is sufficient to constitute the offence, underscoring penetration as the pivotal factor in determining whether an offence under section 377 has been committed.
ii) It is important to note that while sections 375, 377, and 377A all pertain to sexual misconduct, they differ significantly in their focus, scope, and application. Section 375 is centred on non-consensual sexual acts, defining the parameters of rape, whereas section 377 targets voluntary intercourse against the natural order, regardless of consent. It aims to prohibit socially or morally unacceptable behaviours and imposes penalties such as imprisonment or fines for transgressions. Section 377A introduces the offence of sexual abuse, particularly concerning minors, broadening the spectrum to encompass behaviours like fondling, stroking, exhibitionism, or any sexually explicit conduct involving individuals under eighteen years of age. It targets acts that may not necessarily involve penetration but still constitute forms of exploitation and harm, aiming to protect vulnerable individuals from sexual abuse and exploitation. While section 377A broadens the scope of sexual offences to include additional behaviours, it does not override or replace sections 375 and 377. Instead, it complements them by addressing specific aspects of sexual abuse, particularly concerning minors. Each section serves a distinct purpose within the legal framework, ensuring clarity, precision, and effectiveness in addressing various forms of sexual violence

and exploitation while upholding principles of justice and human rights.

iii) In Pakistan, the competency of a witness is determined under Articles 3 and 17 of the Qanun-e-Shahadat, 1984 (QSO), while the credibility of a witness is a question of fact which the court decides following the principles settled for the appraisal of evidence. Article 3 of the QSO does not explicitly specify any particular age qualification for a witness. Under Article 3 of the QSO, a child can be a witness if he possesses the capacity and intelligence to understand and respond rationally to questions – a criterion known as the "voir dire test."

iv) The court's satisfaction in terms of Article 3 of the QSO is not merely a procedural formality but a legal obligation that must be discharged with utmost care and caution.

v) It is a well-established legal principle that mere friendship or association is insufficient to discredit a witness unless there is evidence of hostility towards the accused.

vi) The courts in our country generally do not consider the delay in making a report to the police material unless circumstances are such that they warrant an adverse view. Several factors can contribute to a delay in reporting child sexual abuse, including fear, shame, threats from the perpetrator, or a lack of awareness. The legal system aims to balance the need to protect children from abuse with the principles of fairness and due process.

vii) It is well settled that the strength and credibility of the evidence presented by the prosecution, including eyewitness testimonies and medical findings, hold substantial weight in establishing guilt beyond a reasonable doubt. Courts have historically recognized that DNA evidence can be highly persuasive, but its absence or negativity does not automatically invalidate the prosecution's case if other evidence provides robust corroboration.

Conclusion: i) See above analysis no. i.

ii) Sections 375, 377, and 377A of PPC differ significantly in their focus, scope, and application.

iii) A child can be a witness if he possesses the capacity and intelligence to understand and respond rationally to questions.

iv) The court's satisfaction in terms of Article 3 of the QSO is not merely a procedural formality but a legal obligation.

v) Mere friendship or association is insufficient to discredit a witness unless there is evidence of hostility towards the accused.

vi) The courts generally do not consider the delay in making a report to the police material unless circumstances are such that they warrant an adverse view.

vii) DNA's absence or negativity does not automatically invalidate the prosecution's case if other evidence provides robust corroboration.

31. **Lahore High Court**
Rahat Café, Rawalpindi v. Government of Punjab and Punjab Revenue Authority etc.
Writ Petition No. 4290 of 2023
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1664.pdf

Facts: The Petitioners under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 challenged the vires of show-cause notices, issued under Section 24(2) of the Punjab Sales Tax on Services Act, 2012, by the Additional Commissioner Punjab Revenue Authority, Finance Department, Government of Punjab.

Issues: i) Whether under Section 24 (2) of the Punjab Sales Tax on Services Act, 2012 the concerned officer is obliged to afford the taxpayer with opportunity of making a representation as well as hearing?
ii)What do provisions of Income Tax Ordinance, 2001, the Sales Tax Act, 1990 and the Punjab Sales Tax on Services Act, 2012 mandate while assessing tax liability?

Analysis: i) Section 24 (1) of the Punjab Sales Tax on Services Act, 2012 empowers an officer of the authority to make an assessment of the tax liability on the basis of any information acquired during an audit, inquiry, inspection or otherwise, if he draws opinion that a registered person has not paid the due tax or he has made a short payment on account thereof.
ii) Under the tax laws, a procedure for assessment of tax, information to be sought and recovery of tax has been provided in Income Tax Ordinance, 2001, the Sales Tax Act, 1990 and the Punjab Sales Tax on Services Act, 2012. A combined reading of aforesaid statutes especially the provisions relating to assessment of tax show that they are identical in nature.

Conclusion: i) In course of an assessment, the concerned officer of the authority under Section 24(2) of the Punjab Sales Tax on Services Act, 2012 is obliged to afford the taxpayer with opportunity of making a representation as well as hearing.
ii) The provisions of Income Tax Ordinance, 2001, the Sales Tax Act, 1990 and the Punjab Sales Tax on Services Act, 2012 envisage that, while assessing tax liability, a taxpayer should be confronted a show-cause notice with intended assessment/information and to provide him an opportunity of hearing.

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32. **Lahore High Court**
Abdul Rehman Khan Kanju v. Rana Muhammad Faraz Noon and others
Intra Court Appeal No. 29 of 2024
Mr. Justice Muzamil Akhtar Shabir, Mr. Justice Asim Hafeez.
https://sys.lhc.gov.pk/appjudgments/2024LHC1720.pdf

Facts: This Intra Court Appeal is directed against the order of learned Single Judge-in-

Chambers, whereby constitutional petition, preferred by respondent No.1, against the order of Election Commission of Pakistan, was accepted and original order, including notice for attending recount of votes, were declared lacking in jurisdiction and of no legal effect.

Issues: i) Whether request for recount can be entertained, alternatively by resorting to remedy under section 9(1) of Elections Act?
ii) Whether the Election Commission can review the order passed by Returning Officer under sub-section (5) of Section 95 of Elections Act?
iii) What remedies are provided in law for seeking recount of votes?
iv) Whether the power of recount can be exercised, be it the Returning Officer or Election Commission once consolidation of votes was completed and after declaration of returned candidate?

Analysis: i) Moot question for determination is true character of the order of 22.02.2024 and whether such order could be construed as an order passed in purported exercise of jurisdiction(s) under section 8(b) or section 9(1) of Elections Act. Question of maintainability poses a complex scenario in wake of diverse scope of proceedings envisaged under various provisions of the Elections Act and specific limitations/restraints docketed with each of those provisions – for the purposes of present controversy proceedings under subsection (5) of section 95 of the Elections Act are not in question but proceedings under sub- section (6) of section 95 of the Elections Act. After hearing counsels and perusal of order of 22.02.2024, context of the application requesting Election Commission to direct recount of votes and scope of section 9(1) of the Elections Act, we are convinced that order of 22.02.2024 was not passed in exercise of jurisdiction under section 9 of Elections Act, reasons being, that firstly, when a specific remedy was provided before Election Commission and opted for seeking recount in terms of subsection (6) of section 95 of Elections Act. And in presence of specific timebound remedy, resort to general powers of Election Commissioner and invocation of jurisdiction under section 9(1) are unwarranted and manifest disregard of Elections Act. And secondly, equally significant, the probable outcome or causation of exercise of jurisdiction under section 9(1) of Elections Act is not a direction, simplicitor, for recount of votes but, subject to the fulfillment of conditions, declaration to declare polls void and ordering of re-poll. In these circumstances, jurisdiction of Election Commission to direct recount of votes cannot be brought within the ambit of section 9 of the Elections Act. There is another anomaly in the submissions of learned counsels for Election Commission and appellant. If power to direct recount is allowed or deemed permissible under section 9(1) of the Elections Act, it implies that such power would be exercised notwithstanding publication of name of returned candidate, till after sixty days of publication of name, which erroneous construction would then render timebound remedy of seeking recount of votes under subsection (6) of section 95 of Elections Act redundant – in terms of subsection (6) of section 95 of the Elections Act Commission could only direct recount of votes before the conclusion of consolidation proceedings and not after

conclusion thereof. Hypothetically speaking, if power of the Election Commission to direct recount of votes is deemed or considered to be covered under section 9(1) of Elections Act, then such construction suggests that the option of seeking recount of votes could be sought even after conclusion of consolidation proceedings, when otherwise the recount of votes under subsection (6) of section 95 of Elections Act could be ordered before the conclusion of consolidation proceedings and not beyond that.(…) This is an apparent absurdity. Hence, claim of assumption and exercise of jurisdiction by Election Commission, to direct recount of votes by virtue of original order, purportedly under section 9 of Elections Act, is misconceived and is hereby, repelled. In these circumstances, no question of availability of remedy of appeal, under subsection (5) of section 9 of Elections Act against original order arises.

ii) There is another angle to this debate of maintainability of the appeal in the context of jurisdiction of the Election Commission to review the order of the Returning Officer under clause (b) of section 8 of the Elections Act. If the intention of the legislature was to subject proceedings of consolidation by providing remedy of review against the order of the Returning Officer – perceived interpretation of learned counsel for respondent No.1 – then some restraint on conclusion of consolidation by the Returning officer had to be provided to dilute the effect and mandate of sub-section (8) of section 95 of the Elections Act - which mandated the Returning Officer to send to the Commission signed copies of the Consolidated Statement of the Results of the Count and Final Consolidation Result along other material, as specified therein, within twenty four hours after the consolidation proceedings. Even otherwise section 8 of Elections Act starts with the phrase 'save as otherwise provided, the Commission may….", which suggests that assumption and exercise of jurisdiction by Election Commission under subsection (6) of section 95 of the Elections Act is unaffected by section 8 of Elections Act. (…) There is another aspect. If Election Commission cannot pass order of recount after conclusion of consolidation, how could it review the order, if any passed by Returning Officer under sub-section (5) of Section 95 of Elections Act. Even otherwise Section 8 extends general power to the Commission for ensuring fair elections. There appears no statutory bar on the Returning Officer to wait for the outcome of application, moved with the Election Commission for seeking review of the order of Returning Officer, unless and if so, restrained by the Election Commission. In this case even the application for recount with Election Commission was submitted after conclusion of consolidation proceedings.

iii) Remedy(ies) provided in law for seeking recount of votes are diverse, one is before the Returning officer – explicitly in terms of subsection (5) of section 95 of the Elections Act – and other before the Election Commission under subsection (6) of section 95 of the Elections Act. Both remedies are independent, mutually exclusive and each exercisable in the context of the timelines prescribed, for the purposes of filing application and making of requisite direction. Evidently, application under subsection (5) of section 95 of the Elections Act can be filed

with Returning officer, before the commencement of consolidation proceedings and application before Election Commission, in terms of subsection (6) of section 95 of the Elections Act, could, at best, be submitted before the conclusion of consolidation proceedings – since the discretion to decide such application ceases upon conclusion of consolidation.

iv) It is otherwise an absolute absurdity to assume and construe that power of recount could be exercised, be it the Returning Officer or Election Commission once consolidation of votes was completed – upon issuance of Form-49 – when electoral documents were dispatched to the Commissioner and notification for declaration of returned candidate was made under section 98 of the Elections Act. At that point in time, Election Commission, for the purposes of directing recount of votes, became divested of jurisdiction, otherwise available for recount of votes before the completion of consolidation proceedings. (…) Election Commission erred in law while assuming and exercising jurisdiction, and directing recount of votes after conclusion of consolidation proceedings in violation of subsection (6) of section 95 of the Elections Act.

Conclusions: i) The Election commission cannot entertain request for recount alternatively by resorting to remedy under section 9(1) of Elections Act.

ii) The Election Commission cannot review the order passed by the Returning Officer under sub-section (5) of Section 95 of the Elections Act.

iii) See analysis No. iii.

iv) No, the power of recount cannot be exercised, be it the Returning Officer or Election Commission once consolidation of votes is completed.

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33. **Lahore High Court**
Syed Muhammad Ali v. The State and another
Crl. Misc. No.18392-B/2024
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2024LHC1622.pdf

Facts: Through instant Petition, the petitioner/accused has sought post-arrest bail in case arising out of F.I.R. registered under Section 489-F PPC

Issues: i) What is the purpose behind inclusion of Section 489-F PPC?

ii) Whether mere issuance of cheque or its dishonouring is sufficient for invoking Section 489-F PPC?

iii) Whether period in the proclamation for appearance of the accused person can be less than 30 days and he can be termed as proclaimed offender before expiry of said period?

iv)Whether right to grant bail can be withheld due to abscondance of accused as advance punishment?

Analysis: i) Section 489-F PPC was brought on the statute for the purpose of awarding punishment to the person, who issues the cheque dishonestly for repayment of a loan or fulfilment of an "obligation", which is dishonoured on presentation...

ii) For invoking Section 489-F PPC, mere issuance of cheque or its dishonouring is not sufficient rather first of all it will have to be proved as a "must" that cheque was issued for repayment of loan or fulfilment of obligation, meaning thereby that there must be material available on the record to show loan or obligation…Section 489-F PPC was not brought on the statute for using the same as a tool for recovery of the amount rather for the purpose of awarding punishment to the person, who issues the cheque dishonestly for payment of a loan or fulfilment of an "obligation", which is dishonoured on presentation.

iii) Case was registered on 03.02.2024, non-bailable warrants of arrest of the accused were issued on 08.02.2024, proclamation against him was issued on 15.02.2024 whereas challan report under Section 173 Cr.P.C. for proceedings under Section 512 Cr.P.C. was submitted on 17.02.2024 yet at the same time apprises that accused was arrested in the case on 08.03.2024 and sent to jail on 09.03.2024 where he was confined. Since proclamation was issued on 15.02.2024, and period in the proclamation for appearance of the accused cannot be less than 30 days as per statute and admittedly petitioner was arrested on 08.03.2024 i.e. before expiry of said period, therefore, he cannot be termed as proclaimed offender(…)

iv) If Court has come to the conclusion that case of the prosecution against the accused requires further probe/inquiry, then bail is granted to him as of right and same cannot be withheld due to abscondance…Mere detention of the petitioner in jail would serve no useful purpose to the case of prosecution. It is trite law that bail cannot be withheld as advance punishment.

Conclusion: i) See above analysis no. i.

ii) Mere issuance of cheque or its dishonouring is not sufficient for invoking Section 489-F PPC rather there must be material available on the record to show loan or obligation.

iii) Period in the proclamation for appearance of the accused person cannot be less than 30 days and he cannot be termed as proclaimed offender before expiry of said period.

iv) Right to grant bail cannot be withheld due to abscondance of accused and as advance punishment.

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34. **Lahore High Court**

Mst. Haleema and others v. Executive Director (C&CD), Securities and Exchange Commission of Pakistan and another

Intra Court Appeal No. 32 of 2024

Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Tariq Nadeem

https://sys.lhc.gov.pk/appjudgments/2024LHC1507.pdf

Facts: This Intra Court Appeal has been filed against the order passed by the learned Single Judge in Chambers, whereby the Petition filed by the appellants under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 was

dismissed and the order passed by the Executive Director (C & CD), Securities and Exchange Commission of Pakistan, Company Law Division, Corporatization and Compliance Department, appointing Chartered Accountant, as Inspector for carrying out the investigation into the affairs of the company was held to be valid.

Issues: i) Can a director participate in discussions or vote on a contract or arrangement if he has a direct or indirect interest in it, according to the Companies Ordinance, 1984?

ii) Whether it is necessary that all the conditions as mentioned in section 265 (b) of the Companies Ordinance,1984 should exist at the same time before the appointment of an Inspector?

Analysis: i) The participation of the interested director in the Board Meeting wherein the resolution for disposal of the agricultural land owned by the Company was passed, violated the provisions of section 216 of the Companies Ordinance,1984, which provide that no director of a company shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement, nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote.

ii) Section 265 of the Companies Ordinance, 1984 allows the appointment of an Inspector to investigate the affairs of a company in certain prevailing conditions as enumerated in section 265 of the Companies Ordinance ,1984. It is also clear from the bare reading of section 265 of the Companies Ordinance ,1984 that it is not necessary that all the conditions as mentioned in section 265 (b) of the Companies Ordinance,984 should be existing at the same time before the appointment of an Inspector, rather even if one of the several conditions is, in the estimation of the Commission, existing, as the word "or" has been used after every condition mentioned in section 265 (b) of the Companies Ordinance ,1984 allowing for the appointment of an Inspector, then the order of appointment of an Inspector to investigate the affairs of the company can be validly passed. The rule is that the word "or" is usually disjunctive and the word "and" is usually conjunctive and a withdrawal from the same is not available unless the very purpose and object of the Statute so requires. The reason being that if the Legislature wants to use "and" in a special statutory provision, then it has each right to do and nothing interrupts them from making so. So, if the word "and" has not been used and rather the word "or" has been used, it is clear that the Legislature has purposely applied the word "or". Except when it is confirmed that there was some design or problem that stopped the Legislature from using the word "and", literal translation has to be used to read the statutory provision and the rule "or" is usually disjunctive and "and" is usually conjunctive" has to be provided effect to.

Conclusions: i) As per section 216 of the Companies Ordinance,1984, no director of a company

shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement, nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote.

ii) It is not necessary that all the conditions as mentioned in section 265 (b) of the Companies Ordinance,1984 should be existing at the same time before the appointment of an Inspector, rather even if one of the several conditions is, in the estimation of the Commission, existing, then the order of appointment of an Inspector to investigate the affairs of the company can be validly passed.

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35. **Lahore High Court**
Muhammad Saleem v. Regional Police Officer and five others
W. P. No.1780 of 2024
Mr. Justice Sadiq Mahmud Khurram
https://sys.lhc.gov.pk/appjudgments/2024LHC1500.pdf

Facts: Through this Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, petitioner prayed that the impugned order passed by Regional Police Officer/respondent No.1whereby the investigation of the case F.I.R was ordered to be changed in the light of the recommendation of the Regional Standing Board may kindly be declared illegal, against the law & facts, perverse, arbitrary, fanciful and the same may very kindly be set aside.

Issues: i) What are the cardinal rules for interpreting statutes according to the principle that the grammatical and ordinary sense of words used by the Legislature should be adhered to?

ii) How should a court approach cases where literal adherence to the words of an enactment results in absurdity or injustice?

iii) What is the procedure outlined in Article 18(A) of the Police Order, 2002 for changing the investigation?

iv) Is the language of Article 18(A) of the Police Order, 2002 clear and unambiguous such that there is no need to imply additional conditions or reasons for the refusal of an application for transfer of investigation by the District Police Officer before submitting an application to the Regional Police Officer?

Analysis: i) One of the cardinal rules of interpretation of statute is that the grammatical and ordinary sense of the words used by the Legislature in expressing its intention is to be adhered to.

ii) If literal adherence to the words of any enactment appears to produce an absurdity or an injustice, it will be the duty of a Court, so interpreting, to consider the state of the law at the time the Act was passed with the view to ascertaining whether the language of the enactment is capable of another fair interpretation or whether it may not be desirable to put upon the language used, a restrictive meaning. The first rule of construing any enactment is to give the words their

natural meaning and it is only if no reasonable result can be arrived at by giving the words their natural meaning that some other interpretation is permissible. The first and the safest principle of interpretation of statutes is to remain within the language of law and not going beyond the intendments.

iii) The procedure for the change of the investigation has been clearly narrated in the Article 18(A) of the Police Order, 2002, wherein it has been provided that the District Police Officer, after obtaining opinion of the District Standing Board and for reasons to be recorded in writing may transfer the investigation of a case to any other investigation officer and if the District Police Officer has decided an application for transfer of the case, the Regional Police Officer may, within seven working days of the filing of an application, after obtaining opinion of the Regional Standing Board and for reasons to be recorded in writing, transfer investigation of a case also.

iv) The language of the Article 18(A) of the Police Order, 2002 is very clear in its meaning therefore there is no need to read any words into the Article 18(A) of the Police Order, 2002. No particular reasons for the refusal of the application for the transfer of the investigation of the case by the District Police Officer, before an application can be submitted to the Regional Police Officer,have been mentioned in the Article 18(A) of the Police Order, 2002 and had the legislation intended to restrict the submission of an application to the Regional Police Officer, in a certain case after its dismissal by the District Police Officer, then the legislation would have used those words. The very fact that the legislation has not mentioned in the Article 18(A) of the Police Order, 2002 any particular reason for the refusal of the application for the transfer of the investigation of the case by the District Police Officer, the absence or presence of which reason for deciding an application by the District Police Officer would regulate the filing of an application of change of investigation before the Regional Police Officer, reflects that it had no intention to do so.

Conclusions: i) One of the cardinal rules of interpretation of statute is that the grammatical and ordinary sense of the words used by the Legislature in expressing its intention is to be adhered to.

ii) See analysis No.ii.

iii) The District Police Officer may transfer the investigation of a case after obtaining the opinion of the District Standing Board and recording the reasons in writing. If the District Police Officer decides on an application for the transfer of the case, the Regional Police Officer has the authority to transfer the investigation of the case within seven working days from the filing of the application, after obtaining the opinion of the Regional Standing Board.

iv) According to the interpretation provided, the language of Article 18(A) of the Police Order, 2002 is clear and unambiguous. It does not specify any particular reasons for the refusal of an application for the transfer of investigation by the District Police Officer before submitting an application to the Regional Police Officer.

36. **Lahore High Court**
Rana Muhammad Faraz Noon v. Election Commission of Pakistan, etc.
Writ Petition No.1333 of 2024
Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC1745.pdf

Facts: This petition has been filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 for setting aside the impugned order passed by respondent No.1 and impugned notice issued by respondent No.2 by declaring the same as illegal, without jurisdiction and without lawful authority against the law and facts of the matter.

Issues: i) Whether the Election Commission has any authority or power to pass an order for recounting in terms of section 95 (6) of the Elections Act after completion of consolidation proceedings?
ii) Whether issuance of notice to the contesting candidates is necessary before passing of order qua recounting of votes under section 95 (6) of the Elections Act?
iii) Whether the high court has jurisdiction under Article 199 of the Constitution to entertain a petition involving question of law or interpretation of law in respect of an election dispute?
iv) Whether any power of review has been conferred upon the Election Commission to review its own order?

Analysis: i) From plain reading of the above, it can very conveniently be resolved that powers conferred upon the Commission are constricted only to the issuance of declaration with regard to declaration of poll as void and repolling in respect of one or more polling stations or even in the whole constituency when Commission is satisfied that by reason of grave illegalities or violations of the provisions of the Elections Act or Rules that materially affected the result of the poll at one or more polling stations or in the whole constituency including implementation of an agreement restraining women from casting their votes, repolling and recasting of the votes was necessary. The provisions referred above when are seen in their entirety, same do not confer any power upon the Commission to pass an order for recounting of votes in terms of section 95 of the Elections Act while invoking the provisions of section 9 of the Elections Act. (…) Bare reading of above particularly sub section (6) of Section 95 of Elections Act vividly reveals that the Commission may before the conclusion of consolidation proceedings, after giving notice to contesting candidates and for reasons to be recorded, direct the Returning Officer to recount the ballot papers of one or more polling stations. The powers conferred upon the Commission with regard to passing an order for recounting of the ballot papers are limited and same can be exercised only before the conclusion of consolidation proceedings subject to notice to the contesting candidates. (…) The Commission, therefore, had no authority or power to pass an

order for recounting in terms of section 95 (6) of the Elections Act when consolidation proceedings stood completed and even notification under section 98(1) of the Elections Act declaring petitioner as returned candidate was issued. (…) Impugned order passed by the Commission issuing direction to respondent No.2 for recounting after the completion of consolidation proceedings cannot remain unnoticed by this Court while exercising jurisdiction under the provisions of Article 199 of Constitution particularly in view of the fact that the impugned order was passed after issuance of Notification No.F.2(5)/2024-Cord(1) dated 16.02.2024 and more particularly after the establishment of Election Tribunal through Notification No.F.23(8)/2024- O/o-DD-Law dated 20.02.2024 inasmuch as the moment when Commission issued notification qua the establishment of Election Tribunal so as to decide the election disputes, no authority or jurisdiction was left with the Commission to pass an order qua the recounting of the ballot papers under section 95 of the Elections Act.

ii) It may further be seen that order qua recounting of votes under section 95 (6) of the Elections Act can only be passed after putting the contesting candidates to notice by also giving the reasons justifying order of recounting. In the instant case, undeniably, no notice whatsoever was served to the petitioner before passing an order of recount of ballot papers. Assistant Director (Law) of the Commission upon Court query that whether any notice was issued to petitioner before passing order for recounting, frankly and fairly stated that no notice was served upon petitioner before passing the impugned order. Where law itself provides issuing of notice to a candidate before passing any order for recounting of ballots, same is required to be construed strictly. It is settled principle of law that when a thing is required to be done in a particular manner that must be done in that particular manner and not otherwise. The Commission had failed to follow the dictates of provisions of section 95 (6) of the Elections Act and passed the impugned order even in disregard of norms of judicial procedure that requires issuance of notice to a person whose rights are likely to be affected adversely by the impugned order.

iii) As regards arguments of learned counsel for respondent No.3 and learned Law Officers that order passed by the Commission was not amenable to constitutional jurisdiction of this Court under Article 199 of the Constitution, same carries little substance for the reason that where the action in question suffers from mala fides and is without jurisdiction or is coram non judice, this Court got the jurisdiction to go into and test the validity of such an action.(…) no remedy whatsoever has been provided elsewhere in the Elections Act to impugn an order passed by the Commission with regard to recounting of ballot papers after the consolidation of results of the count, therefore, petitioner cannot be allowed to remain remediless, as such he was well within his right to challenge the impugned order while invoking the provisions of Article 199 of the Constitution (…) Where no remedy is provided elsewhere to challenge the impugn order qua recounting of votes, this Court has got the jurisdiction under Article 199 of the Constitution to entertain a petition involving question of law or interpretation of law in respect of an election dispute.

iv) no remedy of review of an order passed by the Commission itself has been provided elsewhere in the Elections Act. As per section 8(b) of the Elections Act, the Commission only has the power to review an order passed by an Officer under the Elections Act or Rules including rejection of ballot papers. No power of review has been conferred upon the Commission to review its own order.

Conclusions: i) The election commission has no authority or power to pass an order for recounting in terms of section 95 (6) of the Elections Act when consolidation proceedings stood completed.
ii) The order qua recounting of votes under section 95 (6) of the Elections Act can only be passed after putting the contesting candidates to notice by also giving the reasons justifying order of recounting, therefore the same is required to be construed strictly.
iii) Where the action in question suffers from mala fides and is without jurisdiction or is coram non judice and no remedy is provided elsewhere then the high Court has got the jurisdiction to go into and test the validity of such an action in respect of an election dispute.
iv) No power of review has been conferred upon the Commission to review its own order.

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37. **Lahore High Court**
Adnan Anwar v. Ijaz Ahmad & others
Civil Revision No.72449 of 2023
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC1638.pdf

Facts: Through this Civil Revision filed u/s 115 of Code of Civil Procedure, 1908, petitioner has called into question the vires, validity and legality of judgment whereby Appellate Court, while accepting the appeals of respondents, set-aside the judgment/order of Trial Court through which the auction was confirmed in favour of the petitioner and sale certificate was issued.

Issues: i) Whether the provisions regarding the payment of 80% of the balance purchase money under sub-section (5) of Section 11 of the Punjab Partition of Immoveable Property Act, 2012 are mandatory or merely directory?
ii) What are the consequences of non-compliance with Section 11(5) of the Act regarding the payment of the balance 80% of the purchase money?
iii) Does non-payment of the balance 80% of the purchase money amount to an irregularity in connection with the "publication and conducting of the sale" under Order XXI, Rule 19 CPC?
iv) How does non-compliance with Section 11(5) of the Act affect the previous proceedings for sale?
v) Whether the Court has power to extend the time for payment of the balance money of the sale price under Section 148 or Section 151 CPC?
vi) Under what circumstances does the maxim "act of the court prejudices no

man" apply?

vii) Whether the Court has power to enlarge the time fixed under Section 11(5) of the Act?

viii) Whether the permission of the Court is required to deposit the remaining consideration amount after an auction?

Analysis: i) The provision with regard to payment of 80% of the balance purchased money contained under sub-section (5) of Section 11 of the Act ibid is mandatory in nature and not merely directory.

ii) Non compliance thereof renders a sale void and the court is under obligation in such circumstances to order for resale of the property in terms of Section 11(10) of the Act ibid.

iii) Non payment of balance 80% of the purchase money cannot be described as an irregularity in connection with the "publication and conducting of the sale" so as to attract the provisions of Order XXI, Rule 19 CPC.

iv) The fact of non compliance of Section 11(5) of the Act ibid on auction sale is that the sale is rendered void and there is no sale within the contemplation of said section. In the event of a default the previous proceedings for sale would completely wiped out as if they do not exist in the eye of law.

v) The Court had no power either under Section 148 or Section 151 CPC to extend the time fixed for payment of the balance money of sale price.

vi) The maxim that act of the court prejudice no man apply on to those cases where it is shown in the first place that the party, who acted bonafidely on the order of Court was in no way responsible for passing of that order and secondly the party was in a position to meet his obligation under law but non compliance resulted due to orders of the Court.

vii) The Court was not possessed any power to enlarge the time fixed under this Section ibid. (…) There is no force in the arguments of learned counsel for the petitioner that the petitioner deposited the remaining 80% amount within the period stipulated by the Court. In this regard, suffice is to say that no Court can deviate from the mandatory provision of law. The act of the Court derives force from the statute and when the statute has not provided any leniency in this regard then how the Court could give any relaxation.

viii) The legislature has not necessitated the permission of the Court to deposit the remaining consideration amount. Petitioner was bound to deposit the remaining 80% amount within 07-days after the auction to which he failed. Hence, non-compliance of said mandatory provision entails the penal consequences.

Conclusions: i) The provision with regard to payment of 80% of the balance purchased money contained under sub-section (5) of Section 11 of the Act ibid is mandatory in nature and not merely directory.

ii) Non-compliance with the Section 11(5) of the Act renders a sale void and the court is under obligation to order for resale of the property.

iii) Non-payment of balance 80% of the purchase money as per the Section 11(5)

of the Act cannot be described as an irregularity in connection with the "publication and conducting of the sale" so as to attract the provisions of Order XXI, Rule 19 CPC.

iv) In the event of non-compliance of Section 11(5) of the Act, the sale is rendered void and the previous proceedings for sale would completely wiped out as if they do not exist in the eye of law.

v) The Court had no power either under Section 148 or Section 151 CPC to extend the time fixed for payment of the balance money of sale price.

vi) See above analysis no. vi.

vii) The court has no power to enlarge the time fixed under Section 11(5) of the Act.

viii) Permission of the Court is not required to deposit the remaining consideration amount after an auction and the same is to be deposited within 07-days after the auction.

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38. **Lahore High Court**
Sabir Ali v. Munawar, & others
Civil Revision No.2938 of 2022
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC1827.pdf

Facts: Through this Civil Revision, filed u/s 115 of Code of Civil Procedure, 1908, the petitioner has called in question the validity and legality of impugned orders/judgments of Courts below, whereby, his objection petition was dismissed concurrently.

Issues: i) What is the limitation period for filing of an application for the execution of a decree or order of Civil Court?

ii) When the order should be deemed to a final order which will give a fresh start for the purposes of limitation?

iii) When the order will not be regarded as having finally disposed of the petition, and a subsequent application will be regarded as one for the revival and continuation of the original proceedings?

iv) What are the circumstances when the application for execution would not be regarded as fresh application?

v) When the execution application is deemed to be pending?

vi) When the subsequent application for execution would be regarded as fresh application and not for revival and continuation of the original proceedings?

vii) Whether the reports in the 'Warrant Dakhal' and Rapt Roznamcha Waqiati, that possession was given to the decree holders, can be taken as conclusive proof of the fact that the decree holders were put into physical possession of the suit land decreed in their favour?

Analysis: i) By virtue of Article 181 of the Limitation Act, 1908 an application for the execution of a decree or order of a Civil Court has to be made within three years

of the date of decree or order sought to be executed. Section 48 of C.P.C. prescribes a period of six years as the outer limits after the expiry of which the Court cannot entertain a fresh application for execution.

ii) Where the Court intended to dispose of the matter completely and no longer keeps it pending on its file and does not merely suspend the execution or consign the record to the record room for the time being, the order must be deemed to a final order which will give a fresh start for the purposes of limitation, and that the proceedings not being pending, there would in such a case be no question of revival.

iii) But, where such an order is made in a case in which the decree holder could not take further proceedings owing to circumstances beyond his control, the order will be regarded as merely suspensory in its nature and a fresh application will be regarded as one for the revival and continuation of the original proceedings. Thus, where the execution is stayed or is prevented by injunction, or becomes impossible to be proceeded with, owing to a claim being advanced to the property which is the subject of the execution or owing to some other obstacle placed by the judgment debtor in the way of execution, and the application "dismissed" or "struck off" or "consigned to the record room" or "returned" the order will not be regarded as having finally disposed of the petition, and a subsequent application will be regarded as one for the revival and continuation of the original proceedings.

iv) It should be noted that the words 'fresh application' have been used in Section 48(1) C.P.C., therefore, what is contemplated under this section by the words 'fresh application', is a substantive merely ancillary or incidental to a previous application, that is to say if the decree holder seeks to set the court into motion to take further proceedings in respect of an application already pending or where the application has been recorded or where the execution proceedings have been suspended by reasons of appeal or other proceedings, it would not be regarded as fresh application.

v) The execution application was deemed to be pending so long as no final order disposing it of judicially has been passed thereon. In subsequent application in such a case for execution will be deemed to be one merely for the continuation of the original proceedings.

vi) Where final judicial order termination the execution petition had been passed on the application, such execution proceedings could not be revived and the subsequent application for execution would be regarded as fresh application and not one for revival and continuation of the original proceedings.

vii) Mere on the reports, in the 'Warrant Dakhal' and Rapt Roznamcha Waqiati, that possession was given to the decree holders cannot be taken as conclusive proof of the fact that the decree holders were put into physical possession of the suit land decreed in their favour till then the decree holders admitted said fact. …

Conclusion: i) See above analysis no. i.

ii) See above analysis no. ii.

iii) See above analysis no. iii.
iv) If the decree holder seeks to set the court into motion to take further proceedings in respect of an application already pending or where the application has been recorded or where the execution proceedings have been suspended by reasons of appeal or other proceedings, it would not be regarded as fresh application.
v) The execution application is deemed to be pending so long as no final order disposing it of judicially has been passed thereon.
vi) Where final judicial order termination the execution petition had been passed on the application, such execution proceedings could not be revived and the subsequent application for execution would be regarded as fresh application.
vii) Mere on the reports, in the 'Warrant Dakhal' and Rapt Roznamcha Waqiati, that possession was given to the decree holders cannot be taken as conclusive proof of the fact that the decree holders were put into physical possession of the suit land decreed in their favour till then the decree holders admitted said fact.

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39. **Lahore High Court**
Asghar Ali (deceased) through LRs. v.
Ahmad Ali (deceased) through LRs, etc.
Regular Second Appeal No.75 of 2002
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC1838.pdf

Facts: The plaintiff/predecessor of appellants (hereinafter referred to as "appellant") instituted suit for recovery of possession , cancellation of registered sale deed and sought specific performance of agreement to sell which was decreed. Feeling aggrieved, the respondents filed an appeal. During arguments in appeal, the parties agreed for decision of matter on the basis of record qua identity card of a witness and court ordered for summoning of record. The appellant filed an application for elaboration of interim order of summoning of record which was dismissed and appellant moved a review petition for recalling of order. In the meanwhile the lower appellate court received the relevant record and in the light of record, the appeal was allowed and suit was dismissed and review petition was also dismissed. Feeling aggrieved, appellant filed instant Regular Second Appeal which was dismissed by this court. The appellant assailed said judgment & decree through appeal before the Hon'ble Supreme Court of Pakistan which was allowed and the matter was remanded with a direction to decide the same afresh on merits.

Issues: i) Whether Offer made by a party to decide the lis on a particular way and accepted by the other side is enforceable under the law as agreement?
ii) Whether agreement made in the Court is a settlement and resiling of party from same would amount to abuse the process of Court?

Analysis: i) Appellant moved the application for recalling of his consent when the offer made by the respondents was accepted by him and had become a binding contract. Offer made by a party to decide the lis on a particular way when accepted by the

other side had matured into an agreement, same was enforceable under the law and nobody would be allowed to resile from it unless said agreement/contract was either void or had become frustrated… It is settled proposition of law that offer once made by any party and accepted by the other party becomes a binding contract between the parties and nobody is allowed to resile or back out from it on the principle of estoppel.

ii) An agreement made in the Court is a settlement to which the Court is also a party, therefore, such an agreement is not one of those agreements which a party may keep or break as it liked. To allow a party to resile from his earlier commitment without adequate reason would amount to allowing him to play a game of hide and seek with other party and even would amount to abuse the process of Court. Where parties choose deviation from normal course and a mode (procedure) for decision of lis is adopted by the Court on their request, the decision given in pursuance thereof should be given effect to and the parties are estopped from challenging such mode of decision and they could not resile or feel aggrieved against the procedure adopted by the Court. Appellant would have no right whatsoever to wriggle out from such accepted offer being an agreement of binding nature and also on the principle of approbate and reprobate.

Conclusion: i) Offer made by a party to decide the lis on a particular way when accepted by the other side had matured into an agreement; same was enforceable under the law.

ii) Agreement made in the Court is a settlement and resiling of party from same without adequate reason would amount to abuse the process of Court.

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40. **Lahore High Court**
Rao Humayun Waqas v. The State, etc.
Criminal Appeal No.10549 of 2021
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC1817.pdf

Facts: The appellant, along with co-accused (since acquitted) was tried by the Additional Sessions Judge/Judge MCTC in case FIR registered under sections 302/109/34 PPC and on conclusion of trial, the trial court while acquitting co-accused through the same judgment convicted the appellant under section 302 (b) PPC and sentenced him to imprisonment for life. The appellant was further directed to pay compensation. In case of default, the convict was to undergo further simple imprisonment for six months. Being aggrieved with his above conviction and sentence, the appellant has filed this Appeal.

Issues: i) Whether examination in chief of a witness is to be conducted by the Public Prosecutor and what pattern or technique is required to be followed?

ii) Whether prosecutor is authorized to ask the leading question in examination in chief?

iii) Whether conviction can be recorded on the testimony of a single witness?

iv) Whether recovery of weapon of offence is inconsequential when it does not

match with the spent shells collected from the spot?
v) Whether mere abscondence of accused is a conclusive proof of the guilt of the accused?
vi) Whether in failure of substantive evidence, investigation or other material can be looked into for the purpose of stretching anything favourable to the prosecution?

Analysis: i) It is observed that examination in chief of a witness is to be conducted by the Public Prosecutor who is required to follow the pattern suggested as per international best practices so as to facilitate and assist the witness to recollect the facts. The 17th edition of a book titled "ADVOCACY" edited by Robert McPeake printed by Oxford University Press explains that "examination in chief is the process of eliciting evidence from your own witness and is the first opportunity when the court has to assess the witness. A strong impression made at that stage will give the witness credibility and may withstand any attack in cross examination". The aims of conducting examination in chief is usually three-fold; (a) to establish your case or part of it through the evidence elicited from the witness; (b) to present the evidence so that it is clear, memorable and persuasive; (c) to insulate the evidence, insofar as possible, from anticipated attack in cross examination. To achieve such aim next step is the preparation which involves; (i) selecting the order of witnesses; (ii) selecting the order of evidence to be elicited from each witness. It is preferable to start and finish your case with a witness who makes a strong impression. Avoid calling your first witness whose evidence is particularly vulnerable to cross examination and select which part of his evidence is to be elicited first… Preparation of witnesses is an essential task for the prosecution and it usually depends upon the status of witness as ordinary or expert, and with further segregation as child, vulnerable, infirm, incapacitated like deaf or dumb or old aged. Every sort is to be attend accordingly and prosecutor, before presenting the witness in the court, must have a meeting in order to apprise him about the Court science, like appearance style, court decorum, manners and attitude in response to questions asked by the prosecutor, defence counsel and the Court. There are many techniques to follow for conducting examination in chief of a witness. The main two techniques were discussed by this Court in a case reported as "MUHAMMAD RAMZAN Versus The STATE and others" (2023 P Cr. L J 1156)… Apart from technique of signposting and piggybacking for conducting examination in chief of a witness, there are in place certain other suitable and practiced rules in every nook and corner of the world in the Courts. In terms of 'Form of questions', guidelines are as under; (i) Do not lead (ii) Avoid wide question and ask focused/specific/targeted questions (iii) Avoid long question and ask short, simple questions (iv) Avoid compound questions and ask one question at a time (v) one point at a time (vi) Have a dialogue and ensure the questions follow on (vii) establish facts not conclusions (viii) Avoid comment, build to a point. For sequence or structure of questions, following rules are followed; (i) Help the witness to tell the story (ii) paint a picture (iii) Help the

Court to follow (iv) use the exhibits and photos (v) use of plans (vi) avoid irrelevancies (vii) listen to the answers (viii) avoid quick fire questions (ix) avoid interrupting (x) use piggybacking as cited above. To have a control on the witness, techniques are as follows; (i) Ask precise question (ii) know your material (iii) demonstrate clear direction (iv) know where you are going (v) plan transition or alternate questions.

ii) Though prosecutor is not authorized to ask the leading question in examination in chief which is explained in Article 136 of the Qanun-e-Shahadat Order, 1984… however, it is subject to some conditionalities as mentioned in Article-137… First condition is objection of opposite party, if no objection is raised, leading questions can well be asked, whereas on the objection of opposite party, still there is a space to ask leading questions if the Court permits. Court has been guided through the same provision to grant permission if the question relates to matters which are introductory or undisputed or which in the opinion of Court have already been sufficiently proved. Usually to avoid leading questions, prosecutors while conducting examination in chief can use technique of five Ws, which means formulating of interrogatories with "when, where, what, who, why" and for seeking wide expression can ask the witness 'to describe/explain' the fact he stated. The words may not be put into the mouth of witness rather question must be framed in a sequence as to extract the story of witness in his own words. Prosecutor is not bound to conduct the examination in chief of witness in a sequence of facts as mentioned in statements of witnesses recorded under section 161 Cr.PC rather it should be rearranged to create an impact by abandoning the unnecessary details. KEITH EVANS in his book "ADVOCACY IN COURT" (A Beginner's guide) summarized the task as follows; It is done by bearing in the mind the 'one line of transcript' rule, breaking the thing down into the shortest questions eliciting the shortest answers, and by analyzing out as you go along what building bricks you in fact require in order to erect the structure of evidence that you want from this witness. Broken down into the smallest pieces, every story, just about, can be drawn out of a witness without leading questions being used. But you often do have to break the narrative down very finely.

iii) There is no cavil to the proposition that conviction can be recorded on the testimony of a single witness but it is only in a situation when there is only one witness available at the place of occurrence but when prosecution claims more witnesses at the crime scene, then disbelieving the testimony of one or two in contrast to others, squarely helps the prosecution to stay and build their abode on the testimony of single witness because in that eventuality absence of corroboration stems so strong to fail the prosecution case easily in terms of non-availability of proof beyond reasonable doubt while casting a serious doubt on that single testimony.

iv) The recovery of pistol 9-mm is not helpful to the prosecution in the sense that it did not match with the spent shells collected from the spot. Thus, recovery is totally inconsequential losing its corroborative effect in this case.

v) So far as the question that accused/appellant remained absconder, there is

plethora of authorities of superior Courts on this point that mere abscondence of accused is not a conclusive proof of the guilt of the accused. The value of abscondence depends upon the fact of each case and abscondence alone cannot take the place of guilt unless and until the case is otherwise proved on the basis of cogent and reliable evidence, therefore, in view of the dictum handed down in "RAHIMULLAH JAN Versus KASHIF and another" (PLD 2008 SC 298) mere abscondence would not be taken as a conclusive proof of guilt of accused.

vi) It is trite that when substantive evidence fails, investigation or other material hardly supply want of evidence and it cannot be looked into for the purpose of stretching anything favourable to the prosecution except one in the form of digital or forensic evidence, which is not available in this case.

Conclusion: i) See above analysis no. i.

ii) Prosecutor is not authorized to ask the leading question in examination in chief however, it is subject to some conditionalities as mentioned in Article-137 of the Qanun-e-Shahadat, 1984 which are discussed in detail under analysis No. (ii).

iii) Conviction can be recorded on the testimony of a single witness but it is only in a situation when there is only one witness available at the place of occurrence.

iv) Recovery of weapon of offence is inconsequential when it does not match with the spent shells collected from the spot.

v) Mere abscondence of accused is not a conclusive proof of the guilt of the accused.

vi) In failure of substantive evidence, investigation or other material cannot be looked into for the purpose of stretching anything favourable to the prosecution except one in the form of digital or forensic evidence.

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41. **Lahore High Court**
Muhammad Siddique (deceased) through L.Rs. v. Muhammad Yaqoob & others
C. R. No. 2168 / 2014
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC1770.pdf

Facts: This Civil Revision is directed against the impugned Judgments & Decrees passed by Civil Judge and Additional District Judge, respectively, whereby, suit of Respondent No. 1 was concurrently decreed.

Issues: i) Whether it is necessary to list the particulars of oral sale transaction in the plaint and as such it is also necessary to independently prove such oral sale transaction?

ii) Where two written statements were filed i.e., first conceding not verified on oath and second contesting, and the court had impliedly discarded the conceding written statement, whether in these circumstances court can subsequently rely on the first conceding written statement and interpret the same as constituting admission?

iii) Whether a bona fide purchaser for valuable consideration without notice is

entitled to the protection accorded to him by Section 41 of the Transfer of Property Act, 1882 and Section 27(b) of the Specific Relief Act, 1877?

Analysis: i) Record vividly reflects that Respondent No. 1 as Plaintiff did not list the particulars of oral transaction in the plaint and as such did not independently prove the oral transaction. The evidence qua oral sale transaction of Respondent No. 1 was not only beyond pleadings but was also discrepant and contradictory particularly with respect to details of oral transaction and receipt of earnest money by Respondent No. 2 on behalf of the Minors. No stamp vendor was produced to prove the procurement of stamp papers for the alleged draft sale deed (Ex.P1). No revenue official was produced with respect to alleged objection of concerned Sub-Registrar denying registration of sale deed in favour of Respondent No. 1 without guardianship certificate in favour of Respondent No. 2 regarding the Minors. Admittedly, sale deed in favour of the Petitioner by Respondent No. 2 was executed and registered as natural guardian of the Minors and there is no explanation to the effect that if the same could be registered why draft sale deed in favour of Respondent No. 1 was declined. There is no evidence that alleged witnesses of the draft sale deed were also witnesses of oral transaction. No target date was alleged with respect to the oral sale transaction. No effort was made to deposit balance sale consideration in Court which admittedly had not been paid till the decision of the suit to demonstrate the readiness and willingness on the part of Respondent No. 1 to perform his part of the oral contract and his financial ability to discharge his obligation. As such, Respondent No. 1 could not prove oral sale transaction as alleged in the plaint.

ii) The first conceding written statement is dated 10.01.2007 while the second contesting written statement is dated 13.01.2007 with a difference of only three days. The second written statement pointed out the death of a minor which fact would naturally be known to Respondent No. 2. Further, the first written statement is not verified on oath unlike the second written statement. Respondent No. 2 while submitting second contesting written statement had specifically stated that the first conceding written statement is neither filed nor signed by him nor he appointed the alleged Advocate or executed any power of attorney in this behalf. He specifically prayed that the same be struck off. As such, the Court impliedly accepted the plea of Respondent No. 2 as it proceeded to frame issues and recorded evidence of the parties. Hence, subsequent reliance by the Courts below on the first conceding written statement and interpreting the same as constituting admission of Respondent No. 2 against the claim of Respondent No. 1 was unwarranted.

iii) The PWs had categorically admitted the claim of the Petitioner that sale deed was executed by Respondent No. 2 in favour of the Petitioner and that the latter was in possession of the suit property. Respondent No. 1 did not specifically claim in the plaint nor produced any evidence to prove that the Petitioner was not a bona fide purchaser for value or had prior knowledge of oral sale transaction between Respondents No. 1 and 2. In contrast, the Petitioner had emphatically

denied the suggestion that he had any prior knowledge of the said alleged oral sale transaction. Overwhelming evidence is on record, whereby, Respondent No. 2 admitted to have executed a registered sale deed in favour of the Petitioner after receiving entire sale consideration. As such, there is no occasion not to give preference to a valid and lawfully registered subsequent sale deed over an unproved oral sale transaction. Hence, the Petitioner as bona fide purchaser for valuable consideration without notice was entitled to the protection accorded to him by Section 41 of the Transfer of Property Act, 1882 and Section 27(b) of the Specific Relief Act, 1877.

Conclusion: i) Yes, it is necessary to list the particulars of oral sale transaction in the plaint and as such it is also necessary to independently prove such oral sale transaction.
ii) Where two written statements were filed i.e., first conceding not verified on oath and second contesting, and the court had impliedly discarded the conceding written statement, in such circumstances court cannot subsequently rely on the first conceding written statement and interpret the same as constituting admission.
iii) A bona fide purchaser for valuable consideration without notice is entitled to the protection accorded to him by Section 41 of the Transfer of Property Act, 1882 and Section 27(b) of the Specific Relief Act, 1877.

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42. **Lahore High Court**
Mst. Abida Rafique Ghouri through her legal heir Mst. Ambreena Azeem v. Syed Amjad Hussain Gillani and 03 others
Civil Revision No. 26520 of 2019
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC1927.pdf

Facts: This Civil Revision assails the concurrent judgments & decrees passed by Civil Judge and Additional District Judge respectively, whereby, the suit for specific performance of respondent No. 1 against the petitioner impleaded through her legal heir was concurrently decreed.

Issue: Whether payment of balance sale consideration in court as per direction of the court is sufficient to prove the willingness and ability of the party to complete the sale transection?

Analysis. **…**the Trial Court directed the Respondent to deposit the balance sale consideration in the Court within one month. After settling mode of payment through subsequent orders, the Trial Court granted absolute last opportunity to the Respondent to deposit the balance sale consideration within thirty days and in compliance thereof, the same was paid in the Court. Under these circumstances, it cannot be conclusively conferred that the Respondent did not have financial ability to complete the sale transaction. This is especially so since the Respondent had promptly instituted the suit i.e. 1-1/2 months after the target date. The Petitioner, in her written statement, while admitting the transaction did not seek immediate payment of remaining sale consideration by demonstrating her

willingness to execute sale deed but sought rescission of the Agreement.

Conclusion: Payment of balance sale consideration in court as per direction of the court is sufficient to prove the willingness and ability of the party to complete the sale transaction.

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43. **Lahore High Court**
Punjab Mashhad Meat Complex and another v. Mashhad Meat Industrial Complex
F. A. O. No. 79041 of 2023
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC1538.pdf

Facts: Through this Appeal order has been challenged, whereby, application of the appellants filed under section 34 of the Arbitration Act, 1940 for staying the proceedings in suit as well directing the parties to pursue their remedies in terms of the arbitration clause, has been rejected.

Issues: i) Whether applications seeking time to file written statement are taken as a requisite intention to waive off a right to get the causes resolved through arbitration?
ii) Whether every step in the proceedings would come in the way of enforcement of arbitration agreement and waive off the right under the arbitration agreement?
iii) Whether the arbitration agreement only imposes 'positive' obligation upon the parties to proceed with the disputes?

Analysis: i) An application seeking time to file written statement is normally taken as displaying such intention and an act or step in the proceedings to preclude a party to seek stay on the basis of arbitration clause, in the absence of anything contrary. In case titled "Pakistan International Airlines Corporation versus Messrs Pak Saaf Dry Cleaners" (PLD 1981 Supreme Court 553) the Supreme Court held that an application for adjournment providing time to file written statement prima facie is a step towards proceedings but subject to a chance to the applicant and burdening him to show as to why effect should not be given to this prima facie meaning or presumption… Though applications seeking time to file written statement in some cases are taken as a requisite intention to waive off a right to get the causes resolved through arbitration but as already discussed above, the Supreme Court of Pakistan in Pakistan International Airlines Corporation case (supra) has not taken such step as conclusive proof of this intention rather as prima facie indication only and burdening the one making request to stay to show otherwise.
ii) In case titled "Rachappa Guruadappa, Bijapur versus Gurusiddappa Nuraniappa and others" (1990 MLD 1383) it has been held that a step taken in the suit, disentitling a party from obtaining stay of a proceeding, has to be a step that should display unequivocal intention to proceed with the suit and to abandon the benefit of arbitration agreement or the right to get the dispute resolved by the arbitration. It is also resolved that not every step in the proceedings would come

in the way of enforcement of arbitration agreement and the step must be clear and unambiguous that manifest the intention to waive off the right under the arbitration agreement… a routine adjournment may not necessarily ascribe to be a step in the proceedings, in the absence of any written application for that precise purpose.

iii) In case titled "POSCO International Corporation through Authorised Officer versus Rikans International through Managing Partner / Director and 4 others" (PLD 2023 Lahore 116) it has been observed that an arbitration agreement does not only impose 'positive' obligation upon the parties to proceed with the disputes but also creates negative undertaking for the parties which obligates them not to bring any claim within the arbitration agreement's scope in a forum other than arbitration.

Conclusion: i) An application seeking time to file written statement is normally taken as displaying such intention and an act or step in the proceedings to preclude a party to seek stay on the basis of arbitration clause, in the absence of anything contrary.

ii) Not every step in the proceedings would come in the way of enforcement of arbitration agreement and waive off the right under the arbitration agreement.

i) An arbitration agreement does not only impose 'positive' obligation upon the parties to proceed with the disputes but also creates negative undertaking for the parties which obligates them not to bring any claim within the arbitration agreement's scope in a forum other than arbitration.

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44. **Lahore High Court**
Muhammad Zulfiqar Ali v. Rashid Mehmood Sidhu
F.A.O No. 72708 of 2023.
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC1525.pdf

Facts: Through this appeal, filed under section 19 of Intellectual Property Organization of Pakistan Act, 2012, the appellant challenged order passed by learned Intellectual Property Tribunal that for filing of the second suit is not hit by the bar contained in Order XXIII Rule 1(3) of CPC.

Issues: i) Whether second suit, which was pending at the time of unconditional dismissal as withdrawn of the first suit, is liable to be rejected under the bar contained in Order XXIII Rule 1(3) of CPC?

ii) Whether the defenders can be subjected to more than one suit for the same cause?

Analysis: i) The consensus of the legend jurists of the subcontinent is clear that if a suit is already pending and after filing of subsequent suit, the first suit is withdrawn, in such case, the provision of sub-rule (3) of rule 1 of Order XIII, C.P.C., precluding the plaintiff from instituting fresh suit is not applicable. Thus, in absence of any clear statutory provision, a party cannot be non-suited on presumptive non-

speaking wisdom of the legislature by any stretch of imagination or interpretation of statute.

ii) It has been held that the common principles engrafted in Order II as well as Order XXIII of CPC is that unless the Court is satisfied as to the reasons given in the relevant rules of the said Orders, the defenders cannot be subjected to more than one suits for the same cause and the relevant Courts, when the pendency of the earlier suit is disclosed, can control the situation by taking an action, at earliest.

Conclusion: i) The second suit, which was pending at the time of unconditional dismissal as withdrawn of the first suit, is not liable to be rejected under the bar contained in Order XXIII Rule 1(3) of CPC.

ii) Unless the Court is satisfied, the defenders cannot be subjected to more than one suit for the same cause.

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45. **Lahore High Court**
Nafees Ahmad v. Zia-ud-Din
R.F.A.No.69211 of 2023
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC1554.pdf

Facts: Through this regular first appeal, judgment and decree passed by learned Additional District Judge has been challenged.

Issues: i) How discretion of granting or refusing leave to defend in a summary suit under Order XXXVII CPC should be exercised by the Court?

ii) Whether failure to fulfill conditions specified in condition leave granting order in suit under Order XXXVII CPC is fatal?

iii) Whether acquittal or discharge of a litigant from criminal case absolve him from the civil liability?

Analysis: i) Order XXXVII Rule 3 (2) of the *Code* authorizes the learned trial Court to grant leave unconditionally or subject to such terms as to payment in the Court or giving security. Granting leave subject to condition or unconditionally is the discretion of the Court which is to be justly exercised while keeping in view the plausibility of the defense.

ii) The failure to fulfill conditions, specified in conditional order granting leave to defend, was found fatal when the defendant remained unable to furnish any plausible reason.

iii) …suffice to say that both the criminal as well as civil cases have different standards of proof and acquittal or discharge from criminal case does not absolve a litigant from the civil liability, if burden is discharged by the other side as per the settled principles of civil standard of proof.

Conclusion: i) Granting leave subject to condition or unconditionally is the discretion of the Court which is to be justly exercised while keeping in view the plausibility of the defense.
ii) See analysis portion above.
iii) Both the criminal as well as civil cases have different standards of proof and acquittal or discharge from criminal case does not absolve a litigant from the civil liability.

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46. **Lahore High Court**
Aun Akhter & another v. Ahmad Abdul Rehman, etc.
Civil Revision No.54194 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2024LHC1654.pdf

Facts: In this Civil Revision, the petitioners assailed the order passed by the District Judge whereby application moved by them for withdrawal of cases of civil nature mentioned therein from the Court of Senior Civil Judge (Family Division) and transfer to the Court of Civil Judge or Senior Civil Judge (Civil Division) was dismissed.

Issues: i) Whether a Judge Family Court has jurisdiction to adjudicate upon disputes of other civil nature?
ii) What is object of the Family Courts Act, 1964 and what is jurisdiction and procedure of Family Courts?
iii) Whether a Civil Judge who is presiding over the Family Court has authority to adjudicate upon any other dispute of other civil nature which falls outside the purview of the Act, 1964?
iv) Whether High Court has power to supervise and control all courts subordinate to it and empower Judges of the Family Court to additionally exercise powers of the Civil Courts?
v) Whether District Judge can transfer any civil suit to the Family Court even though subject matter thereof does not fall within the scope of the Act, 1964?

Analysis: i) It is noteworthy that in the scheme of the Constitution of Islamic Republic of Pakistan, 1973 ('the Constitution') the right of an individual to enjoy the protection of law and to be treated in accordance with the law has been provided. Article 4, inter alia, ordains that no person shall be prevented from or be hindered in doing that which is not prohibited by law; and no person shall be compelled to do that which the law does not require him to do. While a person is constitutionally guaranteed above freedom, there is no inherent power vested in the state organs or authorities to act save for the authority conferred by the Constitution and the law and any act done by the state functionaries, order passed or direction issued, if not sanctioned by the Constitution or the law, is an act without lawful authority. Besides the above general position, there is a specific provision of Article 175(2) in the Constitution that embodies fundamental principle governing jurisdiction of the courts which mandates that no court shall

have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law. There is thus no constitutional or legal presumption that in the absence of any restriction placed by law on him/her, a Judge Family Court has jurisdiction to adjudicate upon disputes of other civil nature rather the presumption is the other way round and for a Judge Family Court to exercise such authority, jurisdiction must be conferred on him or her by the law.

ii) The Act has been promulgated to establish a quasi-judicial forum i.e. the Family Court, which can draw and follow its own procedure provided such procedure should not be against the principles of fair hearing and trial. The object of the Act is to minimize the technicalities and procedural holdups for the purpose of speedy justice between the parties in shortest possible time and manner. The Act has changed the forum and also altered the method as to how the trial under the Act is to be proceeded and case decided. A bare reading of the Act clearly suggests that by willful exclusion of procedure as prescribed under the Code, much has been left at the discretion of the Family Court to conduct trial in the manner as provided under the Act and also to adopt all possible measures and take all such steps, which result in achieving the purpose and object of the Act. Section 3 of the Act provides for the establishment of one or more of Family Courts by the Government in each District in consultation with the High Court consisting of District Judge, Additional District Judge, Civil Judge. Section 12A of the Act provides a period of six months for disposal of the case from the date of its institution. Through section 17 of the Act, provisions of the Code of Civil Procedure, 1908 (except for sections10 & 11) and Qanun-e-Shahadat, 1984 have been made inapplicable and the purpose of enacting such section was in fact to give effect to the preamble of the Act, which provides that it is meant for expeditious settlement and disposal of disputes2 . The nature of disputes which can be brought before the Family Court for adjudication have been set forth and enumerated in Part-I of the Schedule referred to in section 5 of the Act. In order to appreciate scope of jurisdiction of the Family Courts, it is imperative to have a glance at section 5 of the Act and Part-I of the Schedule… It is abundantly clear from section 5 of the Act that it confers exclusive jurisdiction upon the Family Court to entertain, hear and adjudicate upon matters specified in Part-I of the Schedule. On account of exclusive jurisdiction of the Family Courts over family disputes, Civil Courts, which are the courts of inherent and plenary jurisdiction competent to adjudicate upon all disputes of civil nature except the suits of which their cognizance is barred either expressly or by necessary implication, have no authority to adjudicate upon such disputes.

iii) Whether a Civil Judge who is presiding over the Family Court has authority to adjudicate upon any other dispute of other civil nature which falls outside the purview of the Act? is the question involved here. Reliance has been placed on the provisions of sections 12(2) and 15 of the Civil Courts Ordinance, 1962 (‘the Ordinance’) to support the impugned order. Undoubtedly, Family Courts fall within one of the classes of Civil Courts recognized under section 3 of the Ordinance for having been established under the Act, which is in force for the

time being. The other classes of courts include the Court of District Judge, Court of Additional District Judge and the Court of the Civil Judge. Section 7 of the Ordinance confers unlimited pecuniary jurisdiction of the District Judges in original civil suits, except as otherwise provided in any enactment for the time being in force, whereas section 9 of the Ordinance empowers the High Court to determine and classify pecuniary jurisdiction of civil judges in original civil suits. Likewise, provisions of sections 5, 6 and 10 of the Ordinance, inter alia, govern territorial jurisdiction of District Judges, Additional District Judges and Civil Judges. Section 12(2) of the Ordinance empowers a District Judge to withdraw any proceedings taken cognizance of by or transferred to a Civil Judge to either himself dispose of the same or transfer to a Court under his control competent to dispose it of, with the exception that no power of withdrawal is available to the District Judge in relation to such proceedings as have been transferred from his Court by the High Court. It is thus apparent that the power of the District Judge under section 12(2) ibid is limited in its scope to transfer proceedings only to such a Court as would be competent to dispose it of. Section 15 of the Ordinance empowers the District Judge to distribute civil business cognizable by his Court and the Courts under his control by written order, in such manner as he thinks fit, however, it may be emphasized that proviso to the said section mandates that no direction issued under that section could empower any Court to exercise any powers or deal with any business beyond the limits of its jurisdiction. It is thus abundantly clear that be it the power of withdrawal and transfer under section 12 of the Ordinance or the power to distribute business under section 15 of the Ordinance, no authority is vested in the District Judge to entrust any matter to and empower a Civil Judge to adjudicate upon any civil claim beyond the limits of its jurisdiction, in particular over the subject matters covered by special enactments. There is thus no provision in the Punjab Civil Courts Ordinance, 1962 or the Family Courts Act, 1964 or the rules made thereunder which confers authority upon the Family Courts to adjudicate upon civil disputes other than those specified in Part-I of the Schedule to the Act. See section 14 of the Ordinance.

iv) Article 203 of the Constitution envisages that each High Court shall supervise and control all courts subordinate to it with the object to establish orderly, honorable, upright, impartial and legally correct administration of justice. The supervision and control over the subordinate judiciary vested in the High Courts under Article 203 of the Constitution is exclusive in nature, comprehensive in extent and effective in operation. Moreover, section 14 of the Ordinance stipulates that Civil Courts in the area to which the Ordinance extends shall be subordinate to the High Court, and, subject to the general superintendence and control of the High Court, the District Judge shall have control over all Civil Courts within the local limits of his jurisdiction. The above provisions, however, do not take away or restrict authority of this Court to empower Judges of the Family Court to additionally exercise powers of the Civil Courts if so notified. But in the instant case, learned counsel for respondents No.3 & 4 has not been able to refer to any such power conferred upon the Judge Family Court.

v) Without prejudice to the foregoing, assuming for the sake of argument that a discretion is available with the District Judge to transfer any civil suit to the Family Court even though subject matter thereof does not fall within the scope of the Act, would it be proper exercise to allow such a transfer? The answer may well be in negative. The Family Court cannot ordinarily hear the civil suits for such Courts have been established for expeditious settlement and disposal of disputes regarding marriage and family affairs and the matters connected therewith. Except for the disputes having unavoidable nexus with the disputes being adjudicated by the Family Court which, if at all could be referred to the Civil Judge presiding over the Family Court, it would be clearly improper exercise of discretion on part of the District Judge to entrust any ordinary civil dispute to the Family Court having no nexus whatsoever with any pending family case. In forming such opinion, this Court is additionally fortified by the consideration of effective administration of justice inasmuch as efficiency of the Family Courts, which are required to proceed expeditiously with the matters without strictly adhering to the rules of procedure and evidence embodied in the Code of Civil Procedure, 1908 and Qanun-e-Shahadat 1984, would be undermined if made to adjudicate upon ordinary civil disputes where the above enactments are required to be applied.

Conclusion: i) A Judge Family Court have no jurisdiction to adjudicate upon disputes of other civil nature.
ii) See above analysis no. ii.
iii) A Civil Judge who is presiding over the Family Court has no authority to adjudicate upon any other dispute of other civil nature which falls outside the purview of the Act, 1964.
iv) High Court has power to supervise and control all courts subordinate to it and empower Judges of the Family Court to additionally exercise powers of the Civil Courts?
v) District Judge cannot transfer any civil suit to the Family Court even though subject matter thereof does not fall within the scope of the Act, 1964?

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47. **Punjab Subordinate Judiciary Service Tribunal Lahore**
Muhammad Anayet Gondal v. The Registrar, Lahore High Court, Lahore
Service Appeal No. 03 of 2022
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Rasaal Hasan Syed, Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC1795.pdf

Facts: Through instant Appeal, the vires of orders / letters passed by respondent have been assailed whereby representations of appellant for treating the intervening period from the date of dismissal to the date of reinstatement into service as on duty and grant of back benefits were declined.

Issues: i) Whether an employee is entitled to grant back benefits for the intervening period, during which he remained out of service and did not engage in any gainful profession?
ii) Whether the impediment of limitation can be allowed if the claim of back benefits is valid?

Analysis: i) The Supreme Court of Pakistan, in a number of pronouncements, has categorically declared that back benefits shall be granted for the intervening period, during which an employee remained out of service and did not engage in any gainful profession. The concept of reinstatement into service with original seniority and back benefits is based on the established principle of jurisprudence that if an illegal action / wrong is struck down by the Court, as a consequence, it is also to be ensured that no undue harm is caused to any individual due to such illegality / wrong or as a result of delay in the redress of his grievance. If by virtue of a declaration given by the Court a civil servant is to be treated as being still in service, he should also be given the consequential relief of the back benefits (including salary) for the period he was kept out of service as if he was actually performing duties. The grant of back benefits, in such situation, is a rule and denial of such benefit is an exception on the proof that such a person had remained gainfully employed during the intervening period.
ii) As the appellant's claim of back benefits is found to be valid and his entitlement has been established, the impediment of limitation cannot be allowed to come in his way, in view of dictum laid down by the Supreme Court of Pakistan in case reported as Abdul Hameed and others v. Water and Power Development Authority through Chairman, Lahore and others (2021 SCMR 1230).

Conclusion: i) Back benefits shall be granted for the intervening period, during which an employee remained out of service and did not engage in any gainful profession.
ii) If the claim of back benefits is found to be valid and his entitlement has been established, the impediment of limitation cannot be allowed to come in his way.

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48. **Punjab Subordinate Judiciary Service Tribunal Lahore**
Nazir Ahmed Langah v. Lahore High Court, Lahore through its Registrar
Service Appeal No.14 of 2021
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Rasaal Hasan Syed, Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC1798.pdf

Facts: Through instant Appeal, appellant has assailed order passed by respondent, whereby appellant's request for grant of proforma promotion as District & Sessions Judge to the extent of pensionary benefits was declined.

Issues: i) Whether a civil servant/appellant can be penalized by the act of the public functionaries?

ii) Whether any fault may be considered on the part of civil servant/appellant especially when the litigation qua disciplinary proceedings and other complaints ended in appellant's favour?
iii) Whether promotion can be deferred on the ground of pendency of some disciplinary or departmental proceedings, if otherwise appellant has fulfilled the criteria for consideration of promotion?
iv) Whether is it right of every civil servant that he be considered for promotion along with his batch mates when he fulfills eligibility criteria?

Analysis: i) It has been apprised that PER for the [certain] period has not been recorded by the Federal Government, however it is not the case of respondent that appellant had any fault in this regard. We are of the opinion that the appellant cannot be penalized by the act of the public functionaries…
ii) Later on, appellant was compulsorily retired from service in the year 2011 and he remained under litigation till the age of superannuation, therefore, appellant's PERs for the years from 2011 to 2016 are not available on record and in this regard there is no fault of the appellant especially when the litigation qua disciplinary proceedings and other complaints ended in appellant's favour.
iii) We feel it appropriate to observe here that under well-settled principles of law, promotion cannot be deferred on the ground of pendency of some disciplinary or departmental proceedings, if otherwise he has fulfilled the criteria for consideration of promotion.
iv) There is no cavil to the proposition that it is an inalienable right of every civil servant that he be considered for promotion along with his batch mates when he fulfills eligibility criteria.

Conclusion: i) A civil servant/appellant cannot be penalized by the act of the public functionaries.
ii) There is no fault of the appellant especially when the litigation qua disciplinary proceedings and other complaints ended in appellant's favour.
iii) Promotion cannot be deferred on the ground of pendency of some disciplinary or departmental proceedings, if otherwise appellant has fulfilled the criteria for consideration of promotion.
iv) It is an inalienable right of every civil servant that he be considered for promotion along with his batch mates when he fulfills eligibility criteria.

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49. **Punjab Subordinate Judiciary Service Tribunal**
Zafar Hussain Bhatti v. Lahore High Court, Lahore through its Registrar
Service Appeal No.06 of 2017
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Rasaal Hasan Syed, Mr. Justice Abid Husain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC1809.pdf

Facts: Through instant Appeal, appellant has assailed orders passed by respondent, whereby appellant's request for grant of proforma promotion as District & Sessions Judge was declined.

Issues: i) Whether subsequent events including allegations of inefficiency and misconduct become irrelevant once a promotion has been made after fulfillment of all legal and procedural requirements?

ii) Whether the power of receding an order is available with the authority after taking a decisive step?

iii) Whether penalty can be imposed retrospectively?

iv) Whether inquiry officer / hearing officer while conducting disciplinary proceedings can act as the appellate / revisional forum over the judgments / order passed by the judicial officer?

Analysis: i) In these circumstances, subsequent events including allegations of inefficiency and misconduct on passing a bail order or pending inquiries would become irrelevant once a promotion has been made after fulfillment of all legal and procedural requirements. These matters may possibly be taken into consideration while processing case for further promotion.

ii) We are of the considered opinion that power of receding an order is available with the authority before taking a decisive step. The purpose behind such power is to retrace the wrong steps taken by the authority, with the exception that where the order has taken legal effect, and in pursuance thereof certain rights have been created in favour of an individual, such an order cannot be withdrawn or rescinded to the detriment of his / her rights. The principle of animus revertendi or locus poenitentiae demand that when an order is acted upon and certain benefits have accrued to the person concerned under the order, the same cannot be withdrawn with retrospective effect to deprive that person of the accrued rights.

iii) It is well-settled that penalty cannot be imposed retrospectively unless the authority is vested with such powers expressly provided under the applicable law / rules. No such provision has been cited by learned counsel for respondent to defend the impugned action. A passing reference to some precedents will not be out of place where the Supreme Court of Pakistan elaborated the principle of awarding major penalty retrospectively, including the cases reported as Noor Muhammad v. The Member Election Commission, Punjab and others (1985 SCMR 1178) and Syed Sikandar Ali Shah v. Auditor-General of Pakistan and others (2002 SCMR 1124), wherein it has categorically been declared that major penalty could not have been imposed with retrospective effect unless the competent authority was expressly empowered in this regard by some statute or rules made thereunder.

iv) Needless to say that a judicial officer while hearing a case is at liberty to decide the same by applying law on the facts thereof based on the available record. A decision passed by any judge may ultimately turn out to be wrong and be set aside by higher judicial forum. The erroneous exercise of judicial power resulting into passing of an order on the basis of incorrect application of law, however cannot and should not cast doubt on the integrity of the judicial officer. The quality of a judgment / order passed by a judicial officer can only be judged in appellate judicial proceedings and ordinarily not through disciplinary

proceedings unless the extraneous considerations for which a judgment / order was passed are proved through cogent material brought before the inquiry officer. The inquiry officer / hearing officer while conducting disciplinary proceedings cannot act as the appellate / revisional forum over the judgments / order passed by the judicial officer. The judicial independence of subordinate judiciary is required to be observed and respected at all cost and the inquiry officer/hearing officer must tread extremely cautiously in such matters otherwise it would put a chilling effect on the working of the subordinate judiciary in performing their judicial functions freely and fairly.

Conclusion: i) Subsequent events including allegations of inefficiency and misconduct become irrelevant once a promotion has been made after fulfillment of all legal and procedural requirements.
ii) The power of receding an order is not available with the authority after taking a decisive step.
iii) Penalty cannot be imposed retrospectively unless the authority is vested with such powers expressly provided under the applicable law / rules.
iv) Inquiry officer / hearing officer while conducting disciplinary proceedings cannot act as the appellate / revisional forum over the judgments / order passed by the judicial officer.

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50. **Punjab Subordinate Judiciary Service Tribunal**
Syed Faizan e Rasool v. The Lahore High Court, Lahore through its Registrar.
Service Appeal No. 15 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Rasaal Hasan Syed, Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC1791.pdf

Facts: Through instant Service Appeal, appellant challenged letter, issued by respondent, whereby his representation for permission to apply for a Master Degree in Law from a foreign university, was declined..

Issues: i) Whether grant of permission to apply for Higher Education and that too from foreign institute is a rule of thumb for every judicial officer?
ii) Whether in matter of grant of leave discretion of authority can be claimed as right?

Analysis: i) As per law, grant of permission to apply for higher education and that too from a foreign university is not a rule of thumb for every judicial officer, and the same is also not backed by any express provisions of law or rules or policy instructions or prevalent practice. This matter pertains to discretion of the authority to be exercised in the light of attending facts and circumstances of each case, saddled with certain requirements/qualifications...
ii) In matters of grant of leave, it is well-settled that such discretion cannot be claimed as of right, but for seeking such relief the applicant must follow the

proper procedure provided under the rules and he is not supposed to avail any kind of leave entirely in his discretion and choice in departure to the rules and service discipline.

Conclusion: i) Grant of permission to apply for Higher Education and that too from foreign institute is not a rule of thumb for every judicial officer.
ii) In matter of grant of leave the discretion of authority cannot be claimed as right rather for seeking such relief the applicant must follow the proper procedure provided under the rules.

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51. **Punjab Subordinate Judiciary Service Tribunal**
Alamgir Liaqat v. The Registrar, Lahore High Court, Lahore & another
Service Appeal No.18 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Rasaal Hasan Syed, Mr. Justice Abid Husain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC1803.pdf

Facts: The appellant assailed vires of order passed by respondent, whereby appellant's representation for expunction of remarks as advisory recorded in his Performance Evaluation Report ("PER") was declined.

Issues: i) Whether adverse remarks are to be treated as advisory if the reporting officer calls them advisory or the authority treats them so?
ii) Whether counselling of an officer is necessary by the reporting or countersigning officers before incorporating adverse remarks in his PER?

Analysis: i) Adverse remarks indicate the defects or deficiencies in the quality of work or performance or conductof a civil servant except the words in the nature of counsel or advice. Adverse remarks could be deciphered from the words used by the reporting officer in his remarks and the impact those words might have on the reputation and general image of the officer. Adverse remarks do not become advisory even if the reporting officer calls them advisory or the authority treats themso. Moreover, advisory remarks, at the time of promotion of the civil servant, would become adverse and carry stigma if it is found that despite the advice the officer did not make any improvement.
ii) It is well-settled that the Reporting or Countersigning Officers are obliged to offer counselling as to the performance of an officer apprising his weak points and advise him/her how to improve, and if the officer fails to improve despite counselling then adverse remarks may be recorded in the PER. It is up to the supervisory officers to see whether the counselling, advice or warning is to be given orally or in written form, or given publically in a general meeting of the officers or privately in a separate meeting with the concerned officer only. The primary purpose of the supervision is to guide the subordinate officers in improving their performance and efficiency, and that their role is morelike a mentor rather than a punishing authority. The directions contained in the instructions, in this regard, on paying great attention to the manner and method

of communicating advice or warning should be adhered to.

Conclusion: i) Adverse remarks are not to be treated as advisory even if the reporting officer calls them advisory or the authority treats them so.
ii) Counselling of an officer is necessary by the reporting or countersigning officers before incorporating adverse remarks in his PER.

LATEST LEGISLATION / AMENDMENTS

1. Notification No. PRA/ Order. 06/2017. Vol(V)/683, dated 10.11.2023 issued in the partial modification of previous notifications with regard to the powers of some officers till further orders.
2. Notification No. PRA/ Order. 06/2017. Vol(V)/682, dated 10.11.2023 issued in the partial modification of previous notifications with regard to the powers of some officers till further orders.
3. Notification No. PRA/ Order. 06/2017. Vol(V)/702, dated 10.11.2023 issued in the partial modification of previous notifications with regard to the powers of some officers till further orders.
4. Amendments made in the Punjab Primary and Secondary Healthcare Department (health Information And service Delivery Unit) Employees Service Rules 2019, vide notification No. SOR-III 1-9/2018, dated 02.04.2024.
5. Notification No.Legis: 5-5/2020/1376, dated 18.04.2024 is issued for the enforcement of Punjab Alternate Dispute Resolution Act 2019 (XVII of 2019).
6. Notification No. SOR-III (S & GAD) 1-27/2002 (PI) dated 15.04.2024 issued regarding the amendments in the Punjab Social Welfare and Bait-ul-Mal.

SELECTED ARTICLES

1. **MANUPATRA**
https://articles.manupatra.com/article-details/AI-Art-and-Law-How-They-Connect

AI, Art and Law - How They Connect by Ankesh

Introduction:

The growth of artificial intelligence seems to have made a lot of hype around the concerns which are typically associated with it, and in that process, they have been perceived to be quite staid over time. However, the exploration around some areas where artificial intelligence could play an important role is very significant, as it provides a certain level of preparedness, when some of these staid concerns do actually start coming true. Artificial Intelligence in its basic form has been around from the times, computers were formed. A simple search on your local drive would count as an artificial intelligence function done by your computer, however these are not remarkable, as you

or your brain could do the same in supposedly, the same or slightly higher amount of time. Task such as calculators, dictionaries are some of the forms of the basic activities done by the computers.
When we talk about these intelligent systems, what we essentially do is feed them a set of commands which they work on a given set of data to yield results. This means, that whatever the computers do or seem to do are done on these sets of data, thereby yielding effective results. Some of them are also, programmed to leave out the ineffective results along with other adjustments. The end goal of such working is to make sure that the end user is fully satisfied and the computers are working to the best of their efficiency.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/STAMPING-OF-ARBITRATION-AGREEMENT-THE-FINAL-CHAPTER-OF-THE-DECADE-OLD-SAGA

Stamping of Arbitration Agreement: The Final Chapter of The Decade-Old Saga by Sarthak Aswal

The question of validity and enforceability of unstamped arbitration agreement clauses has always been a point of question under the Arbitration and Conciliation Act of 1996[ii] and the Indian Stamp Act of 1899. There has been an array of different judgments providing us with contrasting opinions about the matter and it seems like the issue has finally been settled and the conundrum has reached its finality. The Supreme Court's 7-judge bench in its recent judgment of In Re, Interplay Between Arbitration Agreements Under the Arbitration and Conciliation Act of 1996[iii] and the Indian Stamp Act of 1899[iv] unanimously declared that an unstamped arbitration agreement is inadmissible under the Stamp Act but it cannot be rendered as void ab intio and hence arbitration clauses in unstamped or insufficiently stamped agreements shall be held valid and enforceable while this judgment puts a rest to this long drawn issue but the decade-old battle and string of cases involved surely tell a tale.

3. **MANUPATRA**
https://articles.manupatra.com/article-details/COMPARATIVE-ANALYSIS-OF-THE-GOOD-FAITH-DOCTRINE

Comparative Analysis of The Good Faith Doctrine by Vedika Kakar

Introduction:

When two parties are negotiating a contract, it is a likely possibility that one may act in an opportunistic manner which was not reasonably expected of them. The opposite party may suffer loss in this regard; however, they don't have the usual recourse of claiming breach of contract. Situations like these, where a loss has been caused to a party but there has not been a breach of contract are those where the implied covenant of good faith comes into play. The covenant imposes a duty on each party to negotiate and perform contracts in a way that is reasonable and fair to the opposing parties.
Broadly, there are three instances when good faith falls under a contract- as a statutory provision, as a clause under the contract and as an implied covenant. It is easier to seek remedies for the first two as the remedy is arising from an explicit right. In this paper, we would be discussing the latter, the implied covenant which is ambiguous and not recognised by several common law countries. Further, there are broadly two types of scenarios where an implied duty of good faith lies- during negotiations and during

performance. We would be contrasting the implied covenant in a comparative analysis between the United States and the United Kingdom using the UNIDROIT[1] principles.

4. **MANUPATRA**
https://articles.manupatra.com/article-details/Deglobalization-in-India-Challenges-Opportunities-and-the-Role-of-RBI

Deglobalization in India: Challenges, Opportunities, and the Role of RBI by Suprit Raj

Introduction:

A few years ago, if we had discussed "de-globalization," we would have meant promoting domestic industries and isolating ourselves from the rest of the world. However, now that the globe has tasted the nectar of "globalization," de-globalization promotes totally new rhetoric. "De-globalization" in the modern period refers to improved "globalization" or accelerated globalization through digitalization, clearly not decelerated or stunted globalization that slows the economy and sends us back in time.
We seem to hear the word "globalization" every day. Without mentioning "the forces of globalization,"[1] no company-manual, strategy plan, or political statement seems complete. Globalization, however, is not irreversible.[2] It is a decision that countries make, and one that can be reversed. "Globalization" should be embraced not because we believe there is no other option but rather because it is the most effective means of fostering communities and opening doors.[3] "Globalization", traced back to European isolation in the 19th century, involves increased interdependence of economies, cultures, and inhabitants through technology, cross-border trade, and capital flows[4]. Even a new book by "Kevin O'Rourke" and "Jeffrey Williamson", titled "Globalization and History", mentions that by 1914, international markets, infrastructure, engineering, manufacturing, and labor markets had a significant impact on global villages and towns; pricing, infrastructure, and skills were imported from abroad.[5]
Then came the bust. The interwar period saw a dramatic rise in tariffs as "beggar-thy-neighbor" protectionism reigned[6]. International capital markets broke down, and have only recently returned to their pre-1914 levels. The breakdown or decline of globalization is referred to as "deglobalization.[7]" "Deglobalization" involves shifting economies away from producing goods for export and towards the local market.[8] The second deglobalization phase began with commerce, banking, and all aspects of politics with the 2008 crisis, much like the 'Great Depression' and the interwar times in the past.[9] The Great Recession, rising inequality, opposition to the notion of a borderless world, and the high rate of immigration are manifestations of the 2008 crisis that signal the end of "globalization".[10] On the other hand, Brexit and Donald Trump's election as US president are signs of the opposite.[11]

5. **MANUPATRA**
https://articles.manupatra.com/article-details/IS-FAST-FASHION-INDUSTRY-AN-ANTITHESIS-OF-THE-ESG-FRAMEWORK-ANSWERING-THROUGH-THE-LENS-OF-OPTIMISM

Is Fast-Fashion Industry an Antithesis of the ESG Framework? Answering Through the Lens of Optimism by Ankita Kalita

Abstract:

The earth's life-support systems are in danger due to the fast-fashion industry's rapid growth and its consequence of environmental damage. This demands that the fast-fashion business adopt sustainability into its operation system.
Within the model of the triple bottom line, Corporate Social Responsibility operates through the Environmental, Social, and Governance (ESG) framework. Thus, a company's operations are guaranteed to be sustainable, which is defined as the equitable and peaceful development of 'profit,' 'people,' and the 'planet.'
Unfortunately, the fast-fashion industry's unabated, environmentally damaging pre- and post-consumer textile waste makes it the antithesis of the ESG framework. Even though the fast-fashion industry's operations and the ESG framework run counter to each other, it is still possible to incorporate sustainability into the design and production of attractive clothing. Consequently, the author concludes the piece in a positive manner regarding the potential for commercial sustainability in the fast-fashion industry, given the consumers' insatiable and uncontrollable fixation with stylish apparel.
Key-words: ESG framework, CSR, Triple bottom line, Fast-fashion, Lifecycle, Textile, Sustainability, Biocentric, Anthropocentric.

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FORTNIGHTLY CASE LAW BULLETIN

(01-05-2024 to 15-05-2024)

A Summary of Latest Judgments Delivered by the Supreme Court of Pakistan & Lahore High Court, Legislation/Amendment in Legislation and important Articles

Prepared & Published by the Research Centre Lahore High Court

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Mst. Samrana Nawaz, etc. v. MCB Bank Ltd., etc.
C.P.2646-L/2018, C.A.17-L/2019 and C.A.364-L/2020
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2646_l_2018.pdf

Facts: While hearing these cases, a three-member Bench of this Court disagreed with the view earlier taken by another three-member Bench in Habib and Company v. MCB (PLD 2020 SC 227) regarding the meaning and scope of the second proviso to Rule 90 of Order XXI of the Code of Civil Procedure, 1908. Consequently, the matter of interpretation of the said proviso was referred for reconsideration by a larger Bench. These cases have, therefore, been posted before larger Bench for an authoritative pronouncement of the law on the meaning and scope of the second proviso to Rule 90 of Order XXI, CPC.

Issues: i) What are the basic principles of legal interpretation that guide the analysis, focusing specifically on the process of ascertaining legislative intent, the balance between the ordinary linguistic and grammatical meanings of words, and ambiguity within statutes?
ii) What are the meanings and scope of the second proviso to Rule 90 of Order XXI, CPC, as to whether the deposit of the amount is mandated concurrently with the application or if it is contingent upon the court's directive?
iii) What is the purpose of the second proviso to Rule 90 of Order XXI, CPC?
iv) How does the executing court determine the amount required to be deposited under Order XXI, Rule 90 CPC, and what factors are considered in that determination?
v) How does Section 7(2) of Financial Institutions (Recovery of Finances) Ordinance 2001 dictate the application of procedures from the CPC in Banking Court proceedings?
vi) What is the effect of clauses (a) and (b) of Section 19(7) of the Financial Institutions (Recovery of Finances) Ordinance 2001 ("Ordinance") on the provisions of Rule 90 of Order XXI, CPC?

Analysis: i) Before we delve into interpreting the second proviso, it would be advantageous to outline some fundamental principles of statutory interpretation that will guide our analysis. We all know that the ultimate objective of interpretation is to ascertain and give effect to the legislative intent, which constitutes the major step in the process of interpreting statutes and lies at the heart of the interpretative process. The first source from which the legislative intent is to be sought is the words of the statute; then an examination is to be made of the context and purpose of the enactment. Therefore, in the process of interpreting a provision of law, the staring point is to read and understand the words used therein in their ordinary linguistic and grammatical meaning. Generally, such meaning is to be ascribed to them, more so when it is consistent with the context and purpose of the provision

in which they are used. However, where there is a potential conflict between the ordinary meaning of words and the purpose of the provision, courts may depart from the literal meaning to advance the purpose and give effect to the legislative intent. Similarly, if the words are ambiguous and can reasonably bear more than one meaning, courts are to ascribe such meaning to them which will be consistent with the purpose of the provision. Or, if the words in their ordinary meaning lead to absurdity, courts may give them such meaning that will make the provision reasonable and consistent with the context and purpose thereof. The interpretative process, thus, combines both literal and purposive approaches to ensure that the legislative intent is ascertained and given effect.

ii) With this understanding of the keywords used therein, we find that the second proviso stipulates that upon filing the application to set aside the sale, the court will direct the applicant to deposit an amount not exceeding twenty per cent of the sum realised at the sale or furnish security for that amount, and provide the applicant with an opportunity to fulfill this requirement. Until the applicant deposits the amount or furnishes the security, the court cannot proceed to consider and adjudicate upon the merits of the application. Only when the applicant complies with this requirement within the allowed time, can the court proceed to consider the application on its merits. If the applicant fails to do so, the court is to dismiss the application without proceeding to consider and adjudicate upon its merits. (…) The bar on entertaining the application thus arises from the failure of the applicant to "deposit such amount not exceeding twenty per cent of the sum realized at the sale, or furnish such security, as the Court may direct". It becomes operative and effective only when the court first determines the amount to be deposited or the nature of security to be furnished against that amount by the applicant. No applicant can anticipate what amount or security the court would direct him to deposit or furnish, as the case may be; nor can he be allowed to deposit the amount or furnish the security as per his own choice at the time of filing the application. The prior direction of the court to deposit a certain amount or furnish a specified security is a condition precedent (sine qua non) for declining to entertain and dismissing the application under the second proviso.

iii) Evidently, the purpose of the second proviso is to discourage frivolous objections. The condition stipulated in the second proviso for entertaining the application ensures that the rule is not misused to delay the completion of the sale and expeditious conclusion of the execution proceedings, and that the objections are made only by bona fide persons on valid grounds. If upon adjudication the application is found frivolous, the amount deposited or the security furnished, as the case may be, by the applicant is to be appropriated for awarding costs to the person(s) who suffer from the delay in completing the sale due to the filing of the application.

iv) Therefore, in determining the amount required to be deposited, the executing court should consider various factors such as the decretal amount, the time elapsed since filing the execution petition, the sale amount and the applicant's previous conduct, etc., and fix an amount reflective of the costs likely to be

awarded to the affected party in case of dismissal of the application. The literal meaning of the second proviso as ascertained above, which signifies the discretion of the court to determine an appropriate amount not exceeding twenty per cent of the sum realised at the sale, thus aligns with its purpose as well.

v) It is evident from reading the above provisions that they have been given an overriding effect over the provisions contained in the CPC. Similarly as per Section 7(2) of the Ordinance, in the exercise of its civil jurisdiction under the Ordinance, a Banking Court is to follow the procedure provided in the CPC in all matters but only with respect to which the procedure has not been provided for in the Ordinance. Thus, there remains no doubt that where a particular procedure has been provided in the Ordinance to deal with a certain matter, a Banking Court cannot apply the procedure provided in the CPC. In other words, a Banking Court is to follow the procedure provided in the CPC in so far as it is not inconsistent with the procedure provided in the Ordinance. In case of conflict between the two, the procedure provided in the Ordinance is to be preferred and followed.

vi) Rule 90 of Order XXI, CPC, specifies the persons eligible to make the application to set aside the sale, namely, (i) any person entitled to share in a rateable distribution of assets, and (ii) any person whose interests are affected by the sale. It also outlines the grounds for challenging the sale, which are (i) material irregularity in publishing or conducting the sale, and (ii) fraud in publishing or conducting the sale. The first proviso of the Rule restricts the vitiating effect of these grounds only to situations where the applicant has sustained substantial injury due to such irregularity or fraud. And its second proviso mandates that the entertainability of the application is conditional upon the deposit of an amount not exceeding twenty per cent of the sum realised at the sale, or the furnishing of such security, as directed by the court. On the other hand, clauses (a) and (b) of Section 19(7) of the Ordinance address two aspects: (i) the requirement for Banking Courts to follow a summary procedure for investigating objections regarding the sale of any property and completing such investigation within 30 days of filing of the objections; and (ii) the provision for imposing a penalty of upto twenty percent of the sale price of the property if objections are found malafide or aimed at delaying the sale. (…) As evident from the above analysis, clauses (a) and (b) of Section 19(7) of the Ordinance are not comprehensive provisions regarding objections to the sale of property in the execution of a decree. They do not specify who can make objections or the grounds on which objections can be made. Therefore, these clauses cannot function independently of Rule 90 of Order XXI, CPC, regarding objections to the sale of property in the execution of a decree. It is worth noting that since Section 141, CPC, does not apply to applications under Rule 90 of Order XXI, CPC,11 the procedure for investigating objections made under this rule is also summary, as provided in clause (a) of Section 19(7) of the Ordinance. The latter provision merely further prescribes a period of 30 days to complete the investigation of objections through a summary procedure. Clause (b) of Section 19(7) of the Ordinance provides for imposing a penalty of up to twenty percent of the sale

price of the property if objections are found by the Banking Court to be malafide or aimed at delaying the sale of the property. This penalty amount, as discussed earlier, is to be deposited by the applicant, or its security furnished, as per the second proviso to Rule 90 of Order XXI, CPC, before the court entertains the application to set aside the sale. Thus, there is no conflict between the two provisions; clauses (a) and (b) of Section 19(7) of the Ordinance are only complementary to the provisions of Rule 90 of Order XXI, CPC, for the execution of decrees under the Ordinance. A Banking Court is therefore bound to follow both the provisions in the matter of objections made to the sale of property in the execution of a decree.

Conclusions: i) See above analysis No. i.

ii) Under second proviso to Rule 90 of Order XXI, CPC the bar on entertaining the application arises from the failure of the applicant to "deposit such amount not exceeding twenty per cent of the sum realized at the sale, or furnish such security, as the Court may direct". The deposit of the amount, which is required under the proviso, is not to be made by the applicant along with the application but rather it is to be made on the direction of the court.

iii) The purpose of the second proviso is to discourage frivolous objections. It also ensures that the rule is not misused to delay the completion of the sale and expeditious conclusion of the execution proceedings.

iv) The executing court determines the amount required to be deposited under the second proviso to Rule 90 of Order XXI, CPC by considering various factors such as the decretal amount, the time elapsed since filing the execution petition, the sale amount, and the applicant's previous conduct.

v) Provisions of Financial Institutions (Recovery of Finances) Ordinance 2001 have been given an overriding effect over the provisions contained in the CPC. Where a particular procedure has been provided in the Ordinance to deal with a certain matter, a Banking Court cannot apply the procedure provided in the CPC. In case of conflict between the two, the procedure provided in the Ordinance is to be preferred and followed.

vi) Clauses (a) and (b) of Section 19(7) of the Ordinance are not comprehensive provisions regarding objections to the sale of property in the execution of a decree. These clauses cannot function independently of Rule 90 of Order XXI, CPC, regarding objections to the sale of property in the execution of a decree. There is no conflict between the two provisions; clauses (a) and (b) of Section 19(7) of the Ordinance are only complementary to the provisions of Rule 90 of Order XXI, CPC, for the execution of decrees under the Ordinance.

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2. **Supreme Court of Pakistan**
Raja Tanveer Safdar v. Mrs. Tehmina Yasmeen and others
Civil Petition No.3644 OF 2020
Mr. Justice Munib Akhtar, Mrs. Justice Ayesha A. Malik, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3644_2020.pdf

Facts: This Civil Petition impugns Order of the Lahore High Court, which dismissed the writ petition filed by the Petitioner by upholding Order passed by the Governor Punjab as well as Order passed by the Ombudsperson (Mohtasib), Punjab (Ombudsperson) appointed under Section 7 of the Protection against Harassment of Women at the Workplace Act, 2010.

Issues: i) Whether for the application of principle of double jeopardy the case has to be the same as the one that has already resulted in a conviction?
ii) Whether decree under Defamation Ordinance 2002 or major penalty under the PEEDA 2006 or major penalty under the Protection against Harassment of Women at the Workplace Act 2010 will prevent or bar a conviction under the other two laws?
iii) Whether the defamation suit and its decree will oust the jurisdiction of the Protection against Harassment of Women at the Workplace Act 2010?
iv) Whether the High Court can interfere in its constitutional jurisdiction on findings of facts recorded by competent court, tribunal or authority?

Analysis: i) The protection given under Article 13(a) of the Constitution is against prosecution and punishment, which means the trial and its proceedings followed by a conviction. The Muhammad Ashraf case clarified that if the first prosecution results in an acquittal, so far as Article 13(a) of the Constitution is concerned, the second prosecution is not prohibited. The concept of double jeopardy essentially means that a person cannot be tried multiple times for the same offence on which there is a conviction based on the same set of facts as they should not be put in peril twice. It is based on the rule of conclusiveness and finality which requires that once a court has taken cognizance of an offence, tried a person and convicted them, then for the same offence that person cannot be tried again. So, the basic question is that in the case of double jeopardy, the second trial should be on the same set of facts of the first trial which resulted in a conviction for the same offence, which would require the same evidence before the court. Basically, this means that the case has to be the same as the one that has already resulted in a conviction but if the proceedings are different in substance and law then it will not be a case of double jeopardy.
ii) As per the aforementioned orders, there are three different decisions under three separate laws against the Petitioner. Each of these laws are special laws which operate within their given jurisdiction and can result in penal consequences if the requirements of the law are fulfilled. The cause of action accrues to the party only when the ingredients of defamation under Section 3 of the 2002 Ordinance are established. Once these essential components of defamation are proved, through the evidence, then the aggrieved party is entitled to a remedy. In terms of the 2010 Act, harassment means gender-based harassment and discrimination, which can be sexual in nature. Any action that causes interference with work performance or creating an intimidating, hostile or offensive work environment falls within the definition of harassment under Section 2(h) of the

2010 Act. The said Act operates for a very specific purpose which is to determine whether there has been any harassment at the workplace by an employer against an employee. Lastly, as far as PEEDA is concerned, it is for misconduct by levelling false and fabricated allegations against Respondent No.1, which is a separate and distinct cause of action against the Petitioner. Hence, a conviction under any of these laws will not prevent or bar a conviction under the other two laws which operate within their own domain for a specific purpose.

iii) We also find that the comparison of the decree of defamation and orders under the 2010 Act, causing harassment to Respondent No.1, is totally misconstrued. Harassment under the 2010 Act goes to the basic and most fundamental of rights, that being the right to dignity, where a citizen must be able to live and work with respect and value.13 The preamble of the 2010 Act begins by recognizing the constitutional command of the inviolability of human dignity as envisioned in Article 14 of the Constitution. Dignity is, thus, an inherent right well-accepted in the international legal order,14 which ensures that everyone who works has the right to just and favourable remuneration ensuring an existence worthy of human dignity, which is supplemented by social protection. Respectability, acceptability, inclusivity, safety and equitability are the prerequisites for a safe and dignified workspace. This is a crucial objective of the 2010 Act being to uphold and protect the right of dignity of employees at the workplace by ensuring fair treatment, nondiscrimination, mutuality of respect, and socio-economic justice. These statutory objectives are also in conformity with the Principles of Policy set out under Articles 37 and 38 of the Constitution, which promotes social justice and the social and economic well-being of the people. Hence, the argument that the defamation suit and its decree will oust the jurisdiction of the 2010 Act is misconceived and without basis.

iv) There is another important issue in the instant case. We note with reference to this case that Respondent No.1 filed her complaint before the Ombudsperson which was then challenged by the Petitioner before the Governor Punjab. Both these forums are forums of fact where parties can lead their evidence for a factual determination. Therefore, the Order of the Governor will be the final order on the factual side, which cannot be then challenged before the High Court in constitutional jurisdiction in the form and substance of a second appeal on the facts of the case. The High Court cannot interfere in its constitutional jurisdiction on findings of fact recorded by the competent court, tribunal or authority unless the findings of fact are so perverse and not based on the evidence which would result in an error of law and thus, justified interference.15 Therefore, for all intents and purposes, the factual controversy comes to an end after the Order of the Governor, and if, there is any jurisdictional defect or error and procedural improprieties of the fact-finding forum only then the High Court can interfere. In various matters such as service, family, tax, and customs, this Court has consistently restricted the High Court’s powers exercised in the constitutional jurisdiction in terms of determining the factual controversy while simultaneously enhancing the domain of the fact-finding forums.

Conclusion: i) For the application of principle of double jeopardy the case has to be the same as the one that has already resulted in a conviction but if the proceedings are different in substance and law then it will not be a case of double jeopardy.
ii) Decree under Defamation Ordinance 2002 or major penalty under the PEEDA 2006 or major penalty under the Protection against Harassment of Women at the Workplace Act 2010 will not prevent or bar a conviction under the other two laws.
iii) The defamation suit and its decree will not oust the jurisdiction of the Protection against Harassment of Women at the Workplace Act 2010.
iv) The High Court cannot interfere in its constitutional jurisdiction on findings of facts recorded by competent court, tribunal or authority unless the findings of fact are so perverse and not based on the evidence which would result in an error of law and thus, justified interference.

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3. **Supreme Court of Pakistan**
Mst. Iqbal Bibi and others v. Kareem Husain Shah and others
Civil Appeal No. 1229 of 2018
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Mr. Justice Irfan Saadat Khan.
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1229_2018.pdf

Facts: The respondents filed suit for declaration of their title regarding suit-land agitating that power of attorney, basis for rival claim of title of suit land, was a forged and fabricated document; that mutations attested on the basis of that power of attorney were also illegal, which called for correction of the revenue record and cancellation of the aforementioned mutations. The said suit was decreed. The Appellants filed an Appeal which was dismissed. Subsequently, the Appellants filed Civil Revision before the High Court concerned which was also dismissed, hence this Appeal.

Issues: i) How a Power of Attorney, executed in a foreign country, qualifies for the presumption of execution and authentication available as per Article 95 of the *Qanoon-e-Shahadat* Order, 1984?
ii) If the purported seller or donor does not challenge that action of "actual denial of his right" within the prescribed limitation period despite having knowledge of his right to do so, then whether the alleged wrong entry in the subsequent revenue record (*Jamabandi*) does give rise to a fresh cause of action to him?
iii) Whether the suit for cancellation of a registered document is governed by Article 92 or Article 91 of the Limitation Act?
iv)Whether a mere possibility of forming a different view on the reappraisal of the evidence is a sufficient ground to interfere with the concurrent findings of the forums below?

Analysis: i) The presumption as to the authenticity and genuineness of power of attorney has been attached under the provisions of Article 95 of *Qanun-e-Shahadat* Order, 1984. The Court shall presume that every document purporting to be a power of attorney has to have been executed before and authenticated by a notary public, or any Court, Judge, Magistrate, Pakistan Consul or Vice Consul or representative of the Federal Government, was so executed and authenticated. It is for this reason that a power of attorney bearing the authentication of a notary public or an authority is taken as sufficient evidence of the execution of the instrument by the person, who appears to be the executant on face of it.

ii) There are two actions that cause the accrual of right to sue to an aggrieved person: (i) actual denial of his right or (ii) apprehended or threatened denial of his right. Every new adverse entry in the revenue record, being a mere "apprehended or threatened denial", relating to proprietary rights of a person in possession (actual or constructive) of the land regarding which the wrong entry is made, gives a fresh cause of action to such person to institute the suit for declaration. However, the situation is different in a case, where the beneficiary of an entry in the revenue record actually takes over physical possession of the land on the basis of sale or gift mutation and in such a case the time period to challenge the said disputed transaction of sale or gift by the aggrieved seller or donor would commence from the date of such “actual” denial.

iii) The limitation would be governed by the premier relief claimed in the plaint and not by the incidental and secondary relief.

iv) In the exercise of its appellate jurisdiction in civil cases, the Supreme Court as a third or fourth forum, as the case may be, does not interfere with the concurrent findings of the courts below on the issues of facts unless it is shown that such findings are against the evidence available on the record of the case and are so patently improbable or perverse that no prudent person could have reasonably arrived at it on the basis of that evidence.

Conclusion: i) When a Power of Attorney, executed in a foreign country, is duly testified by the Consulate General of Pakistan in that country abroad and registered in Pakistan, only then it qualifies for the presumption of execution and authentication available as per Article 95 of the *Qanoon-e-Shahadat* Order, 1984.

ii) If the seller or donor does not challenge the action of "actual denial of his right" within the prescribed limitation period, despite having knowledge of his right to do so, then repetition of the alleged wrong entry in the subsequent revenue record (*Jamabandi*) does not give rise to afresh cause of action to him.

iii) The suit for cancellation of a registered document is governed by Article 92 of the Limitation Act.

iv) A mere possibility of forming a different view on the reappraisal of the evidence is not a sufficient ground to interfere with concurrent findings of the forums below.

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4. **Supreme Court of Pakistan**
Malik Ahmad Usman Nawaz v. The Appellate Tribunal (Elections Act, 2017) for PP-254 (Bahawalpur-X) Bahawalpur and others
C.P.L.A.244/2024
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._244_2024_07052024.pdf

Facts: The returning officer rejected the nomination papers of the petitioner for reason of difference of signatures on paper and CNIC. The petitioner filed an appeal which was dismissed for different reason of being declared as proclaimed offender. The petitioner assailed the order in writ petition which was also dismissed, hence, this leave petition.

Issues: i) Whether matter of being declared as proclaimed offender can be valid ground for rejection of nomination papers of a candidate?
ii) What is effect on order of Appellate Tribunal rejecting nomination papers on ground other than actually taken for rejection of nomination papers by returning officer?
iii) Whether mismatch of signatures on nomination paper and CNIC is material defect that leads to rejection of nomination paper of candidate?

Analysis: i) It suffices to note that the ground taken against the petitioner could not operate against him as he had admittedly obtained bail from the Peshawar High Court. More generally, the matter of being an absconder or proclaimed offender, and its effect qua the right to contest a general election, has been considered by a learned three member Bench of this Court in judgment in CP Nos. 150 & 152/2024 dated 29.01.2024, titled Tahir Sadiq v Faisal Ali and others (2024 SCP 48). It was, inter alia, observed as follows: "It is also important to note that the disadvantage, if any, for being a proclaimed offender ordinarily relates only to the case in which a person has been so proclaimed, and not to the other cases or matters which have no nexus to that case. For instance, a proclaimed offender is not disentitled to institute or defend a civil suit, or an appeal arising therefrom, regarding his civil rights and obligations. The same is the position with the civil right of a person to contest an election; in the absence of any contrary provision in the Constitution or the Elections Act 2017 ("Act"), his status of being a proclaimed offender in a criminal case does not affect his said right." We respectfully agree. Thus, the ground taken by the learned Appellate Tribunal and upheld by means of the impugned judgment was not sustainable in law.
ii) The failure of the learned Appellate Tribunal to attend to the ground actually taken for rejection of the nomination paper was a material and, in our view, fatal defect in its order which, regrettably, was repeated by the learned High Court in the impugned judgment.
iii) The returning officer has the jurisdiction to reject a nomination paper in terms of s. 62(9) of the Act after a summary enquiry. Clause (d) of subsection (9) allows

for rejection if the returning officer is satisfied that the signatures of either the proposer or the seconder are "not genuine". It will be seen that clause (d) (which deals specifically with the issue of signatures) does not at all speak of the candidate. The rejection of the petitioner's nomination paper for an alleged mismatch between his signatures as on the nomination paper and on his CNIC was therefore not possible in terms of this clause… The nomination paper was signed by the petitioner who, as noted, has never repudiated or disowned the same. The latter part, namely that any declaration or statement had been made with was false or incorrect in any material particular, was also not applicable. Firstly, the candidate's signature is neither a "declaration" nor a "statement" within the meaning of either this provision or s. 60. Secondly, and more importantly, the falsity or incorrectness has to be "material". It is a mandatory legal obligation for the returning officer to apply his mind to the test of materiality and record appropriate reasons in this regard. The order in the present case shows no such thing. Furthermore, the alleged mismatch in signatures was in any case not material. This conclusion is bolstered by a reference to para (ii) of the proviso to s. 62(9).

Conclusion: i) The matter of being declared as proclaimed offender cannot be valid ground for rejection of nomination papers of a candidate

ii) The fact that Appellate Tribunal rejecting nomination papers on ground other than actually taken for rejection of nomination papers by returning officer, is fatal defect in order of Appellate Tribunal.

iii) Clearly, any mismatch in signatures could be "remedied forthwith" within the meaning thereof, and anything capable of being so dealt with (regardless of whether or not it is actually so rectified) cannot be "material" within the meaning of section 62 (9) (c) of Elections Act which can lead to rejection of nomination paper of candidate.

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5. **Supreme Court of Pakistan**
Umar Farooq v. Sajjad Ahmad Qamar and others
C.P.L.As. 210, 212, 213 and 214 of 2024
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._210_2024_15052024.pdf

Facts: The returning officer rejected the nomination papers of petitioner. The petitioner filed appeals against rejection before appellate tribunal which were allowed. The objections to the nomination papers had been taken in the case of the National and Provincial Assembly seats by two persons, who were respectively the contesting private respondents in the leave petitions. Both of these persons filed writ petitions in the High Court against the orders of the Appellate Tribunal. These writ petitions were allowed, hence, these CPLAs.

Issues: i) Whether holding of general election to all assemblies, national and all

provincial assemblies, is mandatory?

ii) Whether allowing holding of general election to all assemblies by virtue of Section 69(1) of the Elections Act, 2017 can override requirement of holding of a general election within 60 or 90 days mandated by the Constitution?

iii) Whether multiple nominations papers can be filed for same constituency and whether rejection of one invalidates the nomination of a candidate?

iv) Whether it is mandatory for the candidate to attend the scrutiny of his nomination papers?

v) Whether a candidate who is alleged to be an absconder can contest elections?

vi) Whether the measure taken through *Habib Akram case* of making of declaration by candidate in relation to criminal cases through filing of affidavit can be applied in General Elections of 2024?

Analysis: i) It is important to keep in mind that in law a general election to each Assembly is distinct and separate. Thus, constitutionally speaking on 08.02.2024 it was not one, but five, general elections that took place. Section 69(1) of the Elections Act, 2017 accommodates simultaneity, though it is again important to understand that this is only permissive and not mandatory.

ii) More particularly, section 69(1) of the Elections Act, 2017, cannot and does not override any requirement mandated by the Constitution itself such as, for example, the holding of a general election within 60 or 90 days (as the case may be) of the dissolution of the concerned Assembly.

iii) As set out in para (i) to the proviso to subsection (9) of s. 62 of the 2017 Act, the rejection of one nomination paper for a constituency does not invalidate the nomination of a candidate "by any other valid nomination paper". Thus, multiple nomination papers can be filed for a candidate for the same constituency and, if so, each has to be scrutinized on its own.

iv) As is well known, Article 225 provides that an election shall not be called in question "except by an election petition presented to such tribunal and in such manner as may be determined by Act of Majlis-e-Shoora (Parliament)". This relates to a time much after that point in the electoral process with which the learned High Court was concerned and has therefore nothing whatsoever to do with the requirement (if any) for the candidate to be in attendance before the returning officer at the time of scrutiny. Secondly, and in any case, there appears to be no such requirement in law. Subsection (2) of s. 62 is an enabling provision, which makes it permissible (but not mandatory) for, inter alia, a candidate to attend the scrutiny of his nomination paper.

v) What is the position, in the context of contesting an election, of a person who is alleged to be an absconder, i.e., a fugitive from law, or even one who is a proclaimed offender? This question has been considered by a learned three member Bench of this Court in judgment in CP Nos. 150 & 152/2024 dated 29.01.2024, titled Tahir Sadiq v Faisal Ali and others (2024 SCP 48). It was, inter alia, observed as follows: "It is also important to note that the disadvantage, if any, for being a proclaimed offender ordinarily relates only to the case in which a

person has been so proclaimed, and not to the other cases or matters which have no nexus to that case. For instance, a proclaimed offender is not disentitled to institute or defend a civil suit, or an appeal arising therefrom, regarding his civil rights and obligations. The same is the position with the civil right of a person to contest an election; in the absence of any contrary provision in the Constitution or the Elections Act 2017 ("Act"), his status of being a proclaimed offender in a criminal case does not affect his said right." We respectfully agree. Clearly, if a proclaimed offender can contest elections someone who is only alleged to be an absconder can equally do so.

vi) Section 12(2) of the 1976 Act provided that a nomination paper was to be in the prescribed form. "Prescribed" had its usual meaning, and the rule-making power was conferred upon the Commission under s. 107. In exercise of such powers the Representation of the People (Conduct of Election) Rules, 1977 ("1977 Rules") were framed. Rule 3 provided that the nomination paper "by which the proposal is made under section 12" was to be in the various forms as appended to the 1977 Rules. The forms so appended contained a requirement that a candidate make a declaration in relation to criminal cases, in terms substantially the same as those set out in para F of the affidavit in Habib Akram, already referred to above. Thus the said affidavit simply tracked a requirement that had been part of the earlier electoral framework. In contrast, the 2017 Act, while conferring as before rule-making power on the Commission (s. 239) takes the form and contents of the nomination paper entirely out of its jurisdiction and power. A nomination paper has to be in the form set out in Forms A and B to the statute… Therefore, it is our view that Habib Akram, being an interim measure, has ceased to be operative, since the 2018 election cycle has come to an end. It had, and has, no application for the General Elections of 2024 or for any elections held or to be held in the present election cycle. Inasmuch as candidates have been required to file affidavits in terms thereof or with reference thereto for the said General Elections or any elections thereafter, that cannot entail any legal consequences or penalties at any stage of the relevant electoral process, including any election dispute taken, or to be taken, to an Election Tribunal set up under Article 225. This will continue to be so until either the electoral framework relating to nomination papers is altered by primary legislation, or the matters in which the order in Habib Akram came to be made are decided finally and conclusively in the same or similar terms, or the said order is expressly extended by the Court. Certainly, absent any such contingencies, the Commission cannot require candidates for any election in the present election cycle to file such affidavits.

Conclusion: i) Holding of general election to all assemblies, national and all provincial assemblies, is only permissive and not mandatory.

ii) See above analysis No. ii.

iii) See above analysis No. iii.

iv) Subsection (2) of s. 62 is an enabling provision, which makes it permissible

(but not mandatory) for, inter alia, a candidate to attend the scrutiny of his nomination paper.

v) If a proclaimed offender can contest elections someone who is only alleged to be an absconder can equally do so.

vi) Habib Akram case, being an interim measure, has ceased to be operative, since the 2018 election cycle has come to an end. It had, and has, no application for the General Elections of 2024. The Commission cannot require candidates for any election in the present election cycle to file such affidavits.

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6. **Supreme Court of Pakistan**
Shahzad Amir Farid v. Mst. Sobia Amir Farid and others
Civil Petition No.3155-L/2023
Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3155_l_2023.pdf

Facts: The petitioner seeks leave to appeal against the impugned order passed by the Lahore High Court whereby his writ petition was dismissed. The conspectus of facts are that due to default in payment of interim maintenance petitioner's defence was struck off and suit for maintenance to the extent of minors was decreed. Subsequently the appeal filed before District Court was also dismissed due to failure to pay interim maintenance.

Issue: Imposing costs in vexatious litigation?

Analysis: The conduct of the petitioner leaves a lot to be desired. It falls significantly short of the expected standards of fairness and amounts to gross abuse of the process of the Court. The persistent dragging of the matter from one court to another constitutes vexatious litigation, and adds to undue delay and overburdening of the Courts. Such frivolous petitions need to be strongly discouraged. Therefore, in view of the callous disregard of the petitioner for the court order to pay interim maintenance and his attempts to delay the payment of decreed maintenance allowance for his minor children, we feel inclined to impose costs on the petitioner in the sum of Rs. 1,00,000/- (Rupees one hundred thousand only) to deter such conduct in the future. The costs shall be recovered by the executing court as part of the decree for maintenance.

Conclusion: Costs of Rs 100,000 imposed as persistent dragging of the matter from one court to another constitutes vexatious litigation and adds to undue delay and overburdening of the Courts.

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7. **Supreme Court of Pakistan**
Muhammad Imtiaz Baig and another, Inayat Ullah. v. The State through Prosecutor General, Punjab, Lahore and another
Muhammad Akram Butt. V. Muhammad Imtiaz Baig and others.
Criminal Petition NO. 1288-L
Criminal Petition NO. 1354-L
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1288_l_2017.pdf

Facts: The petitioners were convicted in case F.I.R for the offences under sections 302/34/109 of the Pakistan Penal Code, 1860 by trial court. Feeling aggrieved, they jointly filed the Criminal Appeal before the learned High Court while the trial court transmitted the Murder Reference for confirmation or otherwise of the sentence of death awarded to the petitioners. A Division Bench dismissed their appeal and maintained the conviction of the petitioners; however, altered their sentence from death to imprisonment for life while extending the benefit of section 382-B Cr.P.C. Resultantly, the Murder Reference was answered in negative. Feeling dissatisfied with the impugned judgment, the complainant has filed the Criminal Petition for Leave to Appeal seeking to set aside the impugned judgment and uphold the judgment of the trial court imposing the death sentence on both the petitioners and the petitioners have filed the Criminal Petition for Leave to Appeal seeking their acquittal against the impugned judgment, whereby their death sentences have been converted into life imprisonment.

Issues: i) What inference can be drawn when a party withholds best available evidence?
ii) What is the proper and legal way of dealing with a criminal case?
iii) How case of counter versions is to be dealt with by the criminal court?

Analysis: i) It has now been well settled that whenever a party withholds the best evidence available, it is presumed in view of Article 129(g) of the Qanun-e-Shahadat Order, 1984 that if such evidence had been produced, it would not have supported the stance of that party.
ii) The proper and legal way of dealing with a criminal case is that the Court should first discuss the prosecution case/evidence to come to an independent finding about the reliability of the prosecution witnesses, particularly the eye-witnesses and the probability of the story told by them, and then examine the statement of the accused under section 342, Cr.P.C; the statement under section 340(2), Cr.P.C. and the defence evidence. If the Court disbelieves the prosecution evidence, then the Court must accept the statement of the accused as a whole without scrutiny. If the statement under section 342, Cr.P.C. is exculpatory, then the accused must be acquitted. If the statement under section 342, Cr.P.C. believed as a whole, constitutes some offence punishable under the law, then the accused should be convicted for that offence only.

iii) In the case of counter versions, if the Court believes the prosecution evidence and is not prepared to exclude the same from consideration, it will not straightaway convict the accused but will review the entire evidence including the circumstances appearing the case at the close before reaching a conclusion regarding the truth or falsity of the defence plea/version. All the factors favouring belief in the accusation must be placed in juxtaposition to the corresponding factors favouring the plea in defence and the total effect should be estimated in relation to the questions viz. is the plea/version raised by the accused satisfactorily established by the evidence and circumstances appearing in the case? If the answer is in the affirmative, then the Court must accept the plea of the accused and act accordingly. If the answer to the question is negative, then the Court will not reject the defence plea as being false but will go a step further to find out whether or not there is yet a reasonable possibility of the defence plea/version being true. If the Court finds that although the accused has failed to establish his plea/version to the satisfaction of the Court but the plea might reasonably be true, even then the Court must accept his plea and acquit or convict him accordingly.

Conclusion: i) Whenever a party withholds the best evidence available, it is presumed that if such evidence had been produced, it would not have supported the stance of that party.

ii) The proper and legal way of dealing with a criminal case is that the Court should first discuss the prosecution case/evidence and then examine the statement of the accused under section 342, Cr.P.C; the statement under section 340(2), Cr.P.C. and the defence evidence.

iii) In the case of counter versions, all the factors favouring belief in the accusation must be placed in juxtaposition to the corresponding factors favouring the plea in defence and the total effect should be estimated in relation to the questions viz. is the plea/version raised by the accused satisfactorily established by the evidence and circumstances appearing in the case.

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8. **Supreme Court of Pakistan**
Imtiaz Latif and others (in Crl.P.No.1690-L), Muhammad Afzal (in Crl.P.No.1691-L) v. The State through Prosecutor General, Punjab, Lahore and another
Criminal Petitions No.1690-L & 1691-L of 2016
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed HasanAzhar Rizvi, Ms. Justice MusarratHilali.
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1690_l_2016.pdf

Facts: Tried by the learned Judge, Anti-Terrorism Court in a case vide FIR for offences under Sections 365-A, 392 PPC read with Section 7 of the Anti-Terrorism Act, 1997, the petitioners were convicted and sentenced. The petitioners approached the High Court concerned by filing criminal appeals which were dismissed

through impugned consolidated judgment; hence these petitions for leave to appeal.

Issues: i) What amounts to be an act of terrorism under Section 6 of Anti-Terrorism Act, 1997?
ii) To what extent the presumption of innocence is associated with the accused?
iii) How the two concepts i.e., "proof beyond a reasonable doubt" and "presumption of innocence" are interlinked?

Analysis: i) The act of terrorism under Section 6 of Anti-Terrorism Act, 1997 clarifies that the actions specified in Section 6(2) of Act ibid constitute the offence of terrorism only if such actions are accompanied by the 'design' or 'purpose' specified in clauses (b) or (c) of Section 6(1) of Act ibid. It implies a conscious decision or strategy aimed at achieving a particular outcome. Courts must consider factors such as premeditation, coordination and the existence of a systematic scheme when determining whether an act meets the threshold of having a terrorist "design." The expression "purpose," on the other hand, refers to the underlying reason or objective motivating an action. In fact, *mensrea* is requirement that needs to be established for an act of terrorism. In addition, it is essential to ascertain whether the act in question has instilled a sense of fear and insecurity in the public, a specific community, or any sect.
ii) It is an established principle of criminal jurisprudence that the prosecution must establish its case beyond a reasonable doubt for an accused to be convicted, until then he is presumed innocent. Mere presumption of innocence associated with the accused is adequate to warrant acquittal, unless the Court is fully convinced beyond reasonable doubt regarding the guilt of the accused, following a thorough and impartial examination of evidence available on the record.
iii) The two concepts i.e., "proof beyond a reasonable doubt" and "presumption of innocence" are so closely linked together, that they must be presented as a unit. It is one of the principles which seek to ensure that no innocent person is convicted. A reasonable doubt is a hesitation which a prudent person might have before making a decision. It is the primary responsibility of the prosecution to substantiate its case against the accused and the burden of proof never shifts, except in cases falling under Article 121 of the *Qanun-e-Shahadat* Order, 1984.

Conclusion: i) For an act to be classified as terrorism under Section 6 of Anti-Terrorism Act, 1997, it must have a political, religious, or ideological motivation aimed at destabilizing society as a whole.
ii) The presumption of innocence remains with the accused till such time the prosecution, through the evidence, satisfies the Court beyond a reasonable doubt that the accused is guilty.
iii) The proof beyond a reasonable doubt requires the prosecution to adduce evidence that convincingly demonstrates the guilt of the accused to a prudent person, otherwise he is presumed to be innocent.

9. **Supreme Court of Pakistan**
Govt. of Balochistan thr. its secy. Forest and Wildlife Dept., Quetta & Another v. Ghulam Rasool etc.
Civil Petitions No.183-Q to 195-Q of 2023
Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik, Mr. Justice Irfan Saadat Khan.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._183_q_2023.pdf

Facts: The Service Tribunal accepted the service appeals of the appellants, wherein their version was accepted. Now, respondents through these civil petitions for leave to appeal have challenged the order of Service Tribunal.

Issues: i) What is meant by the philosophy of natural justice?
ii) Whether the right to a fair trial is a fundamental right?
iii) What is meant by the doctrine of locus poenitentiae?

Analysis: i) The philosophy of natural justice is meant for affording a right of audience before any detrimental action is taken by any quasi-judicial authority, statutory body, or any departmental authority regulated under some law.
ii) The right to a fair trial is a fundamental right, while the vested right, by and large, is a right that is unqualifiedly secured and does not rest on any particular event or set of circumstances.
iii) The doctrine of locus poenitentiae sheds light on the power of receding till a decisive step is taken, but it is not a principle of law that an order once passed becomes irrevocable and a past and closed transaction. Indubitably, if the order is found illegal, no perpetual right can be claimed on the basis of such an illegal order.

Conclusion: i) The philosophy of natural justice is meant for affording a right of audience before any detrimental action is taken by any quasi-judicial authority, statutory body, or any departmental authority regulated under some law.
ii) Yes, the right to a fair trial is a fundamental right.
iii) The doctrine of locus poenitentiae sheds light on the power of receding till a decisive step is taken, but it is not a principle of law that an order once passed becomes irrevocable and a past and closed transaction.

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10. **Supreme Court of Pakistan**
Attaullah v. The State
Criminal Petition No.35-K/2024
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._35_k_2024.pdf

Facts: This criminal petition for leave to appeal is directed against the order passed by the High Court of Sindh, Karachi, in Special Criminal Bail Application.

Issues: i) What is pre-supposed in a case of further inquiry?
ii) What does doctrine of further inquiry denote?

iii) What is the object of trial?
iv) What is the principle to regulate the discretion of grant of bail?
v) Whether CSD can be construed as an authority of or under the control of the Federal Government?

Analysis: i) The case of further inquiry pre-supposes the tentative assessment which may create doubt with respect to the involvement of the accused in the crime whereas the expression "reasonable grounds" refers to grounds which may be legally tenable, admissible in evidence, and appealing to a reasonable judicial mind as opposed to being whimsical, arbitrary, or presumptuous.
ii) For all intents and purposes, the doctrine of 'further inquiry' denotes a notional and exploratory assessment that may create doubt regarding the involvement of the accused in the crime.
iii) It is a well-settled exposition of law that the object of a trial is to make an accused face the trial, and not to punish an under trial prisoner. The basic idea is to enable the accused to answer the criminal prosecution against him, rather than let him rot behind bars.
iv) There is no hard and fast rule or inflexible principle to regulate the exercise of the discretion for grant of bail except that the discretion should be exercised judiciously and there is no inexorable principle in the matter of extending bail but it depends on the facts and circumstances of each case while exercising judicial discretion in granting, refusing, or cancelling the facility of bail, which is neither punitive nor preventative, but is based on an important feature of the criminal justice system that cannot be ignored; that just as liberty is precious for an individual, simultaneously, the interest of the society in maintaining law and order is also dominant. In our view, both are immensely indispensable for the survival and perpetuation of a civilized society.
v) 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 the 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.

Conclusion: i) The case of further inquiry pre-supposes the tentative assessment, which may create doubt with respect to the involvement of the accused in the crime.
ii) For all intents and purposes, the doctrine of 'further inquiry' denotes a notional and exploratory assessment that may create doubt regarding the involvement of the accused in the crime.

iii) The object of a trial is to make an accused face the trial, and not to punish an under trial prisoner. The basic idea is to enable the accused to answer the criminal prosecution against him, rather than let him rot behind bars.
iv) See above analysis No. iv.
v) See analysis No. v.

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11. **Supreme Court of Pakistan**
Siraj Nizam. v. Federation of Pakistan and others
Civil Appeal No.56-K/2021
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._56_k_2021.pdf

Facts: This Appeal with leave of the Court is directed against the judgment passed by the Federal Service Tribunal in appeal whereby the appeal filed by the appellant was dismissed and his assertion for fulfilling requirement of 05 years' service experience in BPS-17 for promotion was rejected.

Issues: i) What is the scope of appellate jurisdiction?
ii) To what extent the leaned Tribunal can do while having exclusive jurisdiction in the matter relating to the terms and conditions of service of the Civil Servants?

Analysis: i) A right of appeal is most valuable right of every aggrieved person. It is also well-known edict that an appeal is a continuation of the original proceedings and the appellate jurisdiction is always obligated to delve not only on the question of law but on question of facts also. The whole case reopens in the appellate jurisdiction to explore and consider all questions of fact and law whether rightly adjudicated by the lower fora or not. Therefore, the verdict of the appellate court either allowing or dismissing the appeal or modifying the order of lower fora, ought to bring to light conscious and proper application of mind.
ii) The learned Tribunal is an ultimate fact-finding forum constituted to redress the lawful grievances of civil servants and ventilate their sufferings. So for all intent and purposes, the leaned Tribunal has exclusive jurisdiction in the matter relating to the terms and conditions of service of the Civil Servants and can go into all the facts of the case and the relevant law for just and proper decision with this clear distinction and sanguinity that under Article 212 (3) of the Constitution of Islamic Republic of Pakistan, an appeal lies to this Court against a judgment, decree, order or sentence of an Administrative Court or Tribunal only if this Court, being satisfied that the case involves a substantial question of law of public importance and grants leave to appeal.

Conclusion: i) The appellate jurisdiction is always obligated to delve not only on the question of law but on question of facts also.
ii) The leaned Tribunal has exclusive jurisdiction in the matter relating to the terms and conditions of service of the Civil Servants and can go into all the facts of the case and the relevant law for just and proper decision.

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12. **Supreme Court of Pakistan**
Khizar Hayat v. Malik Akhtar Mehmood
Civil Petition No. 760 of 2024
Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._760_2024.pdf

Facts: The respondent instituted a suit for recovery against the petitioner under Order XXXVII Rule 2 CPC on the basis of a pro-note and a cheque. In this regard a decision of Arbitrators was also rendered which confirmed the due amount payable by the petitioner. Being aggrieved, the petitioner filed Regular First Appeal before the High Court, which was dismissed. Consequently, this Petition was filed.

Issue: In what circumstances the concurrent findings of the courts below can be interfered with by the Supreme Court?

Analysis: The impugned judgment passed by the High Court is well reasoned and based on proper appreciation of all factors, factual as well as legal. Neither any misreading or non-reading nor any infirmity or illegality has been noticed from the record which could make a basis to take a view other than taken by the High Court.

Conclusion: The concurrent findings of the courts below can be interfered with by the Supreme Court where any misreading, non-reading, any infirmity or illegality has been noticed from the record.

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13. **Supreme Court of Pakistan**
Province of Sindh and others v. Muhammad Tahir Khan Chandio and others.
Civil Appeal No. 928 of 2020 and CMA No.500-K of 2023 in CA No.928 of 2020
Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._928_2020.pdf

Facts: Through this appeal, by leave of the Court, the appellants have called in question the judgment, passed by the High Court of Sindh, Karachi whereby constitution petition filed by the respondents was allowed.

Issue: Whether the adverse remarks passed in the absence of any party will affect the rights of the said party?

Analysis: Mr. Abid S. Zuberi, learned ASC has argued that the newly added respondents (who are referred to above) were not impleaded as a party to the proceedings before the High Court and they were condemned unheard and adverse observations were passed against them in the impugned judgment, particularly, in paragraph Nos. 17, l B, 19 thereof. (…) Being a valid ground that the adverse

observations so made as referred to above will affect the rights of the newly impleaded respondents, therefore, the same are hereby set aside/expunged.

Conclusion: Adverse observations affect the rights of the party who were not impleaded as a party to the proceedings as they would be condemned unheard.

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14. **Supreme Court of Pakistan**
Mst. Saima Noreen v. The State
Muhammad Shafiq v. The State
Jail Petition No. 181 of 2016 with Criminal Petition No. 154-L of 2016
Mr. Justice Syed Hasan Azhar Rizvi, Mrs. Justice Musarrat Hilali, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/j.p._181_2016.pdf

Facts: Both the petitioners challenged their conviction and sentence by filing Criminal Appeal before Lahore High Court, Lahore. Murder Reference was also forwarded to the Appellate Court under section 374 of the Criminal Procedure Code, 1898. While dismissing the appeal of both the petitioners and maintaining their conviction under section 302 (b)/34 PPC, their sentence of death was converted to imprisonment for life as Ta'zir with benefit of section 382-B Cr.P.C, the amount of compensation to be paid to the legal heirs of deceased was ordered to remain intact and murder reference was answered in negative by the Appellate Court vide impugned judgment. Both the petitioners have filed the instant petitions to challenge their conviction and sentence.

Issues: i) What is the effect of material contradictions and discrepancies in testimony of witnesses on prosecution case?
ii) What is the effect of dishonest improvements made by a witness in his statement?

Analysis: i) The statements of PW-3, PW-4, PW-7 and PW-8 reveal of material contradictions and discrepancies which have shaken veracity of their testimony. According to the settled principles, material contradictions in evidence in a criminal case create doubt in the case of the prosecution and lead to reasonable possibility of the witnesses being not truthful.
ii) According to the settled principles of law dishonest improvements made by a witness in his statement to strengthen the prosecution case casts serious doubt about veracity of his statement and makes the same untrustworthy and unreliable.

Conclusion: i) Material contradictions in evidence in a criminal case create doubt in the case of the prosecution and lead to reasonable possibility of the witnesses being not truthful.
ii) Dishonest improvements made by a witness in his statement to strengthen the prosecution case casts serious doubt about veracity of his statement and makes the same untrustworthy and unreliable.

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15. **Supreme Court of Pakistan**
Riasat Ali and Fakhar Zaman v. The State and another
Criminal Petition No.708-L OF 2018
Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Musarrat Hilali, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._708_l_2018.pdf

Facts: Criminal Appeal filed by the convicts and Murder Reference forwarded by the Trial Court have been decided by the Appellate Court vide common judgment whereby appeal of the petitioners was dismissed and while maintaining conviction under section 302(b) of PPC, their sentence was altered from death to imprisonment for life. The amount of compensation and the punishment in default thereof with benefit of Section 382-B Cr.P.C., was maintained. The Murder Reference was answered in negative by the Appellate Court. Feeling aggrieved of the conviction and sentence awarded by the Appellate Court, the petitioners have filed the instant petition.

Issues: i) Whether blackening is found, if a firearm like shotgun is discharged from a distance of not more than three feet and a revolver or pistol is discharged within about two feet?
ii) Whether the unnatural conduct of eye witnesses qua not immediately taking the injured to the hospital to save their lives creates serious doubt about their presence at the place of occurrence with the deceased?
iii) If an eye witness has not been produced, whether under Article 129(g) of the Qanoon Shahadat Order, 1984 adverse inference is drawn to the effect that had he been produced by the prosecution at the trial, he would not have supported the case of the prosecution?

Analysis: i) The postmortem report of deceased Asadullah Khan mentions about blackened and burnt area of his entrance wound near lower end of his scapula. The distance from which the deceased Asadullah Khan was fired upon was 5.5 feet. According to Modi's Medical Jurisprudence and Toxicology1 blackening is found, if a firearm like shotgun is discharged from a distance of not more than three feet and a revolver or pistol is discharged within about two feet….. The prosecution witnesses have failed to furnish any explanation as to if the deceased Asadullah Khan was fired upon by a rifle of 222 bore from a distance of 5.5 feet, how his entrance wound was surrounded by blackened and burnt area.
ii) According to PWs, the occurrence had taken place on 01.01.2012 at 4:45 pm. As per contents of the postmortem report of deceased Pervez Iqbal, the time between his injury and death was about half an hour while the time between the injury and death of deceased Asadullah Khan was about one hour…… From the above it reveals that deceased Pervez Iqbal remained lying injured at the place of occurrence for half an hour and deceased Asadullah Khan remained lying injured at the place of occurrence for one hour but PWs, claiming to be the eye witnesses, made no efforts to immediately shift both the injured to hospital to save their life. Had PWs been present at the place of occurrence with the deceased, being close

relatives of deceased Pervez Iqbal, they would have immediately taken both the injured to the hospital to save their life…… The unnatural conduct of PWs creates serious doubt about their presence at the place of occurrence with the deceased.
iii) The prosecution has not produced witness Muhammad Nawaz at the trial who was allegedly accompanying PWs and deceased Pervez Iqbal at the time of occurrence. Under Article 129(g) of the QanoonShahadat Order, 1984 adverse inference is drawn to the effect that had he been produced by the prosecution at the trial, he would not have supported the case of the prosecution.

Conclusion: i) Blackening is found, if a firearm like shotgun is discharged from a distance of not more than three feet and a revolver or pistol is discharged within about two feet.
ii) The unnatural conduct of eye witnesses qua not immediately taking the injured to the hospital to save their lives creates serious doubt about their presence at the place of occurrence with the deceased.
iii) If an eye witness has not been produced, under Article 129(g) of the Qanoon Shahadat Order, 1984 adverse inference is drawn to the effect that had he been produced by the prosecution at the trial, he would not have supported the case of the prosecution.

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16. **Supreme Court of Pakistan**
Tariq Zubair Khan v. Mst. Tabassum Khan and others
Civil Petition No. 4194 of 2023
Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Musarrat Hilali, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4194_2023.pdf

Facts: This Petition under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 directed against order passed by the Islamabad High Court, Islamabad whereby First Appeal against Order filed by the petitioner was dismissed.

Issues: i) Whether sale of property through auction can be challenged under Order XXI, rule 89 or 90 of CPC or by filing objections pursuant to Order XXI, Rule 84 of CPC?
ii) Whether the court is to deem the objections filed in respect of sale through auction within the purview of Order XXI, rule 90 CPC rather than under Order XXI rule 84 CPC?

Analysis: i) Order XXI CPC itself is an exhaustive order and provides a comprehensive mechanism regarding the execution of the decree. For the satisfaction of the decree by the sale of suit property, Court issues a proclamation of sales through public auction in accordance with provisions of Order XXI, rule 66 of CPC. Eventually, the court decides the mode of making the proclamation to comply with provisions of Order XXI, rule 67 of CPC. The next stage in sale through public auction is the deposit of twenty-five percent of the amount of purchase

money followed by the full amount of purchase money on the fifteenth day from the sale of the property to satisfy the requirements of Order XXI, rules 84 and 85 respectively. Any person aggrieved of auction proceedings may make an application under rules 90 or 91 for setting aside the sale on the grounds of irregularity or fraud….. The contention raised by the learned counsel for petitioner, that application was made under Order XXI, rule 84 but it was decided within the limits of Rule 90 of Order XXI, is not tenable in eyes of law….. It is clear from a bare reading of supra rule that the purchaser is required by law to immediately pay twenty-five percent of purchase money and there is no word that suggests objections to auction proceedings may be filed by the owner/legal heirs of the owner of the subject property under this rule. Moreover, petitioner in this case, was not a purchaser but his predecessors in interest are the owner of the subject property, hence, he could not have invoked this rule….. It is evident from the portion reproduced above that Order XXI rule 84 CPC is subject to Order XXI rule 90 of CPC. Hence, the objections were not maintainable under rule 84 CPC.

ii) In the case at hand, the trial court deemed the objections filed by Petitioner as an application under Order XXI, Rule 90 CPC…. Above rule demonstrates that sale may be set aside on the grounds of material irregularity or fraud under Order XXI, Rule 90 CPC wherein the applicant has to establish substantial injury sustained by him owing to such material irregularity or fraud in the sale by public auction. Additionally, applicant has to comply with the second proviso to this rule by depositing twenty percent of the sum realized at the sale. The rationale behind the second proviso is to discourage the frivolous objections frustrating the execution of the decree. In view of above, Trial Court rightly observed that objections are within the purview of Order XXI, rule 90 CPC rather than under rule 84 CPC.

Conclusion: i) Sale of property through auction can only be challenged under Order XXI, rule 89 or 90 of CPC.

ii) Court is to deem the objections filed in respect of sale through auction within the purview of Order XXI, rule 90 CPC rather than under Order XXI rule 84 CPC.

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17. **Lahore High Court Lahore**
Muhammad Ilyas V. The Chairman National Accountability Bureau and 3 Others
W.P No. 5915 of 2020
Mr. Justice Ali Baqar Najafi, Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC2015.pdf

Facts: Through this Constitutional Petition, the petitioner has challenged order of restriction passed National Accountability Ordinance, 1999, with respect to property as well as the act of placing the *property* under caution and order to include the *property* in the list of confiscated assets for the recovery of fine, in

terms of section 33-E of the *Ordinance*, as arrears of land revenue in connection with another case.

Issues: (i) When the dispute arises between third party on the one side and the real owner and the *benamidar* on the other, what should be taken into consideration to determine as to whether the questioned transaction was a *benami* or not?
(ii) What is the pre requisite to freeze the property or part thereof in possession of the accused or in possession of any relative or associated person, under section 12 (e) of the NAB Ordinance 1999?
(iii) What is the test to determine the reasonable ground as enumerated in Sec.12 (e) of *the Ordinance?*

Analysis: (i) …in the situation when the dispute arises between third party on the one side and the real owner and the *benamidar* on the other, conduct of the parties and surrounding circumstances are to be taken into consideration to determine as to whether the questioned transaction was a *benami* or not.
(ii) Section 12(a) of the Ordinance, which permits NAB authorities or the learned National Accountability Court to pass an order of freezing of any property or part thereof in possession of the accused or in possession of any relative or associated person, itself is dependent upon availability of reasonable grounds.
(iii) while examining section 12, 13 and 23 of the *Ordinance*, reached to the conclusion that *reasonable grounds* as contemplated in the section 12 of the *Ordinance*, requires existence of certain essential facts. The test settled is that the facts and circumstances should be so that it lead a reasonable prudent person to form belief that a property, directly or indirectly, is owned and controlled by an accused under the *Ordinance*. The requisite standard, to pass an order under section 12 of the *Ordinance*, is fixed as more than mere suspicion but less than on the balance of probabilities. It has also been concluded that the power to freeze one's property is subject to judicial scrutiny.

Conclusion: (i) Conduct of the parties and surrounding circumstances are to be taken into consideration to determine as to whether the questioned transaction was a *benami* or not.
(ii) In order to freeze the property under section 12 (e) of the NAB Ordinance 1999, NAB Authorities or National Accountability Courts are required to see whether reasonable grounds are available.
(iii) See above analysis No. iii.

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18. **Lahore High Court**
Muhammad Nawaz v. Muhammad Ilyas & others
R.S.A.No.63469 of 2020
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC2198.pdf

Facts: The present appellant instituted a suit for possession through specific performance of agreement to sell dated 17.10.1993 regarding land in dispute against the respondents.

Issues: i) What is the limitation period for filing a suit for possession through specific performance of agreement to sell?
ii) In case of inconsistency between the findings of the trial Court and the Appellate Court, the findings of which court will be given preference?

Analysis: i) Article 113 of the Limitation Act, 1908 provides three years for filing a suit for possession through specific performance of agreement to sell from the accrual of cause of action when the date of performance is mentioned or if not mentioned from the date of refusal of party against whom the suit for specific performance is filed.
ii) It is a settled principle, by now, that in case of inconsistency between the findings of the trial Court and the Appellate Court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary.

Conclusion: i) Article 113 of the Limitation Act, 1908 provides three years for filing a suit for possession through specific performance of agreement to sell from the accrual of cause of action.
ii) In case of inconsistency between the findings of the trial Court and the Appellate Court, the findings of the latter must be given preference in the absence of any cogent reason to the contrary.

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19. **Lahore High Court**
Mst. Nishat Mummunka v. Safdar Raza
R.F.A.No.65083 of 2022
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC1942.pdf

Facts: Through this application under section 5 of the Limitation Act, 1908, the applicant/appellant seeks condonation of delay in filing the captioned appeal on the ground that due to unavoidable circumstances, the appeal could not be filed within time; that the delay is not deliberate and intentional; therefore, by allowing the application in hand, the delay in filing the appeal may be condoned.

Issue: Significance of Limitation Act?

Analysis: Limitation Act is not mere a technicality rather the same operates as substantive law and if no time constraints and limits are prescribed for pursuing a cause of action and for seeking reliefs/remedies relating to such cause of action, and a person is allowed to sue for the redressal of his grievance within an infinite and unlimited time period, it shall adversely affect the disciplined and structured judicial process and mechanism of the State, which is sine qua non for any State to perform its functions within the parameters of the Constitution and the rule of

law. Limitation Act is a substantive law and after lapse of prescribed period provided under law for challenging any order passed against a person and in favour of other valuable right accrues in favour of the opposite party in whose favour an order or judgment is passed and the party aggrieved has to explain delay of each and every day showing sufficient cause.

Conclusion: Limitation Act is a substantive law and after lapse of prescribed period provided under law, the party aggrieved has to explain delay of each and every day showing sufficient cause for seeking condonation.

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20. **Lahore High Court**
Mst. Zubaida Bibi v. Addl. District Judge, etc.
Writ Petition No.77295 of 2019
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC2104.pdf

Facts: The petitioner instituted a suit for Specific Performance of agreement against the respondent No.2 who filed suit for declaration. Trial Court vide consolidated judgment decreed the suit in favour of petitioner and dismissed suit of respondent no. 02, appeals filed against the said consolidated judgment and decree were dismissed and revision petitions were also dismissed. The respondent No.2 filed two separate CPLAs in the Supreme Court of Pakistan which were dismissed. Thereafter, the decree was executed vide execution petition. The respondent no. 03 filed suit for specific performance on the basis of purported agreement to sell against respondent no. 02 which was still pending. Respondent No. 3 filed objection petition against the decree in execution petition which was dismissed as withdrawn. Respondent no. 03 filed applications u/s 12(2) CPC which was dismissed as withdrawn. The respondent No.3 filed second application under section 12(2) CPC before this Court by suppressing the facts that CPLAs from Supreme Court of Pakistan, his objection petition and earlier petition under section 12(2) CPC were dismissed and his aforesaid suit is still pending and under wrong facts obtained order with the observation that the respondent No.3 may file application under section 12(2) CPC before the learned trial Court. The respondent no. 03 filed another application u/s 12 which was dismissed on merits. The respondent No.3 being aggrieved preferred an appeal, which was converted into revision petition and the same was accepted, hence, the instant constitutional petition.

Issue: What is the ruling of the August Supreme Court of Pakistan regarding the proper forum of filing of application under section 12(2) of Code of Civil Procedure, 1908?

Analysis: Ratio of judgment reported as Sahibzadi Mehar-un-Nisa and another v. Mst. Ghulam Sugran and another (PLD 2016 SC 358), considering the principle of merger, the proper forum for filing application under section 12(2), Code of Civil

Procedure, 1908, is Supreme Court of Pakistan. The relevant part of the said judgment is reproduced as under:- '…… It is thus clear that where a matter has been heard and decided by this Court in appeal and the verdict of the lower forum has been affirmed on merits the rule of merger shall duly apply, and thus the application under section 12(2) of the C.P.C. subject to the exceptions mentioned in the concluding part of this judgment can be competently filed before this Court.'

Conclusion: Where a matter has been heard and decided, the application under section 12(2) of the C.P.C. subject to the exceptions can be competently filed before the same Court.

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21. **Lahore High Court**
Defence Housing Authority, Lahore v. Pervaiz Riaz
Civil Revision No.45297 of 2021
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC2189.pdf

Facts: The respondent instituted a suit for possession with permanent and mandatory injunction in respect of land. The petitioner filed an application under Order I, Rule 10, Code of Civil Procedure, 1908 which was still pending when the trial Court passed an order directing the plaintiff/respondent to file amended plaint. The petitioner filed a review application against the said order. The trial Court took up both application under Order I, Rule 10, Code of Civil Procedure, 1908 and review application and dismissed the same vide impugned order; hence, the instant revision petition

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Issues: i) Who is necessary and proper party to the proceedings?
ii) What is the object of Order I, Rule 10, Code of Civil Procedure, 1908?
iii) Whether the Court is empowered under the Order I, Rule 10 to add any person as plaintiff or defendant in the suit at any stage?
iv) Whether application under Order I, Rule 10 is necessary to order that the name of any party improperly joined be struck out?
v) If for deciding the real controversy a person necessary or proper party, then whether the Court can order to implead such person and vice versa?

Analysis: i) It is avowed that only those persons are necessary and proper party to the proceedings, whose interest are under challenge in the suit and without their presence matter could not be decided on merits. The necessary party is one who ought to have been joined and in whose absence no effective decision can take place.
ii) The object of Order I, Rule 10, Code of Civil Procedure, 1908 is to avoid multiplicity of proceedings, litigation and to ensure that all proper parties are before Court for proper adjudication on merits. Once the Court comes to the conclusion that a person applies for becoming a party is a necessary party then the

Court ought to pass an order directing such person to be impleaded as party in the proceedings.

iii) It is well settled proposition of law that Court is empowered under this provision to add any person as plaintiff or defendant in the suit at any stage and even in appeals or to delete any person. Joining of party at any stage is binding in all subsequent proceedings until set-aside in legal manner. Order I, Rule 10 read with section 107 Code of Civil Procedure, 1908 is applicable to appeals and the appellate Court has discretion to substitute or add any person as appellant or respondent provided they are proper and necessary party to the proceedings.

iv) Under Order I, Rule 10, Code of Civil Procedure, 1908, the Court at any stage of the proceedings either upon or without the application of either party and on such terms as may appear to the Court to be just, may order that the name of any party improperly joined be struck out. When no relief was sought against a person otherwise his presence was not necessary to enable the Court to settle the controversy, such person may not be added as defendant.

v) The theory of dominus litis cannot be expanded in the matter of impleading the parties because it is the duty of the Court to ensure that if for deciding the real controversy a person is necessary or proper party the Court can order to implead such person and vice versa can also order deletion of any such person from the plaint who is not found to be proper and necessary party.

Conclusion: i) The necessary party is one who ought to have been joined and in whose absence no effective decision can take place.

ii) The object of Order I, Rule 10, Code of Civil Procedure, 1908 is to avoid multiplicity of proceedings, litigation and to ensure that all proper parties are before Court for proper adjudication on merits.

iii) Court is empowered under Order I, Rule 10 to add any person as plaintiff or defendant in the suit at any stage and even in appeals or to delete any person.

iv) Under Order I, Rule 10, Code of Civil Procedure, 1908, the Court at any stage of the proceedings either upon or without the application of either party and on such terms as may appear to the Court to be just, may order that the name of any party improperly joined be struck out.

v) If for deciding the real controversy a person is necessary or proper party the Court can order to implead such person and vice versa.

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22. **Lahore High Court**
Muhammad Atif Naveed v. The State
Criminal Appeal No.827 of 2022
Muhammad Ishfaq v. The State
Criminal Appeal No.698 of 2022
The State v. Muhammad Atif Naveed
Murder Reference No.41 of 2022
Mr. Justice Sadaqat Ali Khan, Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2024LHC1999.pdf

Facts: Challenging their conviction and sentences respectively awarded to them in case

registered under section 302/324 & 334 PPC, the appellants have filed respective appeals, whereas trial court sent reference under Section 374 Cr.P.C. As all these matters are *inter se* connected, therefore these are being disposed of through this single judgment.

Issues: i) What is the purpose of providing inquest report to the medical officer before the autopsy of deceased victim?
ii) Whether it would be just to convict an accused on the basis of the deposition of an injured eye witness, without adjudging his credibility?
iii) What is effect of delay of 2/3 days in recording statement of a witness under section 161 of the Criminal Procedure Code, 1898 in connection with a homicide incident?
iv) What would be effect of doubt which arises on the basis of contradiction between-the statement of an eyewitness and the medical evidence?

Analysis: i) The inquest report is a document prepared under Rule 35 of Chapter 25 of Police Rules, 1934 and its circumspective perusal gives traces about the manner in which investigation of a homicide case is conducted on the first day and besides that it also gives clue about the veracity of prosecution's claim regarding the prompt registration of F.I.R. The most important aspect is the brief facts of the case required to be mentioned on its last page. The inquest report is a document which is essentially required to be provided to the medical officer for holding of postmortem examination.
ii) For handing down guilty verdict to an accused in a murder incident, the testimony of an injured eye-witness is still required to be tested on the touchstone of the principles laid down for the appraisal of evidence. To say that an injured witness of murder incident seldom tells lie might be true in a case of single accused but is an overstatement when the number of assailants is more than one.
iii) Delay in recording statement of a witness under section 161 of the Criminal Procedure Code, 1898 gives vent to many hypotheses about the truth behind his statement leaving it unworthy of any credence. In addition, it gives clue that the actual assailants were previously not known to such or the accused were falsely grilled in the case through the tool of substitution with actual unknown assailants.
iv) The medical evidence gives clue about the truth behind the depositions of eyewitnesses regarding their stance of having seen the incident, which enables the Court to adjudge the veracity of an eyewitness for administering justice in an impeccable manner.

Conclusion: i) The purpose of providing inquest report to the medical officer before the autopsy apparently is aimed at safeguarding the record from becoming vulnerable to the impurity of tampering through which the delayed F.I.Rs are shown to have been promptly registered.
ii) It would be wholly unjust to raise the superstructure of conviction of an accused on the basis of deposition of an injured eye witness without subjecting it to strict test of scrutiny for adjudging his credibility.

iii) The delay of even of 2/3 days in recording statement of a witness under section 161 of the Criminal Procedure Code, 1898 in connection with a homicide incident is always considered fatal and may be ousted from consideration if no legally admissible explanation about it is offered.
iv) The contradiction between the statement of an eyewitness and the medical evidence gives rise to a doubt, legitimate benefit whereof would be extended to the accused facing charge of murder.

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23. **Lahore High Court**
Writ Petition No.50 of 2024
Muhammad Maroof and others v. Mst. Mariam Farooq and others
Mr. Justice Mirza Viqas Rauf.
https://sys.lhc.gov.pk/appjudgments/2024LHC2111.pdf

Facts: One of the respondents alongwith his mother/respondent instituted a suit for recovery of maintenance allowance, dowry articles, gold ornaments, currency in the form of Euro, documents as well as alternate price impleading the petitioners, who are his paternal uncles, and his grandfather, who passed away during the proceedings before the Family Court, in the array of defendants. The suit was decreed. The petitioners preferred an appeal, whereas the respondents also challenged the judgment and decree of the Family Court through a separate appeal, however, both the appeals were dismissed by way of impugned consolidated judgment, hence this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

Issue: Whether, in case of death of father, responsibility of maintaining the minor child shifts upon his close relatives, including the paternal uncle?

Analysis: In order to transform the provisions relating to the maintenance, Section 9 of the Muslim Family Laws Ordnance 1961 was amended through Muslim Family Laws (Amendment) Act, 2015 and Sub-Section 1-A was added. Section 17-A of the West Pakistan Family Courts Act, 1964 was also substituted through Family Courts (Amendment) Act, 2015 so as to safeguard the rights of wife and children during pendency of the suit. If the properties left by deceased grandfather have devolved upon minor orphan grandchild and his paternal uncle and these are under possession of the paternal uncle who is deriving benefits therefrom, then such uncle has responsibility towards minor. There is a command by the Almighty *Allah* in Surah 6; Al-An'am, Ayat: 152 prohibiting the use of property of the orphans. As the paternal uncle is deriving benefits from the properties inherited from his father/grandfather of minor orphan, so he is liable to pay the maintenance till handing over the share of the minor orphan grandchild in the estate left by the deceased grandfather. If the minor had no property or the income from his/her properties is insufficient to meet his/her needs after its possession has been handed over to him/her, the paternal uncle would be liable to pay 2/3rd of the

maintenance fixed by the court on account of the kinship and rest of 1/3rd would be contributed by the mother of such minor.

Conclusion: In case of death of father, responsibility of maintaining the minor child shifts upon his close relatives, including the paternal uncle.

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24. **Lahore High Court**
Saif Power Limited v. Sui Northern Gas Pipelines Limited etc.
R.F.A. No.1630/2024
Mr. Justice Ch. Muhammad Iqbal, Mr. Justice Muhammad Raza Qureshi
https://sys.lhc.gov.pk/appjudgments/2024LHC2172.pdf

Facts: Through these regular first Appeals under Section 39 of The Arbitration Act, 1940, the appellants have challenged the validity of orders passed by the learned Civil Judge who dismissed the objection petition of the appellants, made Award rule of the Court and modified the Award by awarding interest from the date of decree.

Issues: i) Whether the Court has jurisdiction to modify, amend award or grant interest on award?
ii) Whether arbitrator can award interest on compensation amount?

Analysis: i) Under Section 15 of the Arbitration Act, 1940, the Court has jurisdiction to modify, amend or correct the Award and u/s 29 the court is empowered/competent to allow interest of award from the date of decree till payment.
ii) Under Section 29 of the Arbitration Act, 1940, the Court has a power to grant interest on the compensation. In the Act ibid no such provision is available which empowers the arbitrator to award interest on compensation amount.

Conclusion: i) Under Section 15 of the Arbitration Act, 1940, the Court has jurisdiction to modify, amend award or grant interest on award.
ii) The arbitrator cannot award interest on compensation amount.

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25. **Lahore High Court**
Sheikh Kamran Shafi & others v Sadaqat Shafi & others
C.O. No.06 of 2014 & C.M. No.314-C of 2015
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC1974.pdf

Facts: The petitioners filed the application under Order VII Rule 11 CPC read with Section 151 CPC seeking rejection of the main civil original petition filed by the respondents under Sections 290, 291 & 292 of the Companies Ordinance, 1984.

Issues: i) What is the statutory criteria for maintainability of petition filed under section 290 of the Companies Ordinance 1984?

ii) What is the judicial consensus on when to allow an application under section 265 of the Companies Ordinance 1984, for seeking investigation in a company?
iii) Whether mentioning the wrong provision of law would prevent the court from exercising its authority?

Analysis: i) Section 290 of the Companies Ordinance, 1984, authorizes any member or members holding not less than twenty per cent of the issued share capital of a company, to make an application to the Court. The pre-requisite qualification for making petition under said provision of law against mismanagement and malpractice in company is that petitioners must hold 20% of issued share capital of such company. In absence of any proof of such prescribed share capital, a petition cannot be held maintainable under Section 290 of the Companies Ordinance, 1984.

ii) In proceedings under section 265 of the Ordinance, full-fledged inquiry in the form of a trial is not required to be held nor any formal evidence is to be recorded. Needless to observe that before passing the order under section 265 of the Ordinance, the Court has to only satisfy itself prima facie, of course, on the basis of the material placed before it, that a case for investigation through an Inspector is called for and it is for the Inspector to ascertain and determine the truth or otherwise of the allegations during the investigation to be conducted by him whereafter he will submit the report to the concerned authority. The matter in fact rests in the discretion of the Court, to be decided after following the summary procedure as laid down in section 9 of the Ordinance.

iii) The mentioning a wrong provision of law in a petition would not prevent the court from exercising its proper authority and appropriate jurisdiction vested under the law, keeping in view the circumstances of a case.

Conclusion: i) Section 290 of the Companies Ordinance, 1984, authorizes any member or members holding not less than twenty per cent of the issued share capital of a company, to make an application to the Court.

ii) In proceedings under section 265 of the Ordinance, full-fledged inquiry in the form of a trial is not required to be held nor any formal evidence is to be recorded rather the Court has to only satisfy itself prima facie, of course, on the basis of the material placed before it, that a case for investigation through an Inspector is called for.

iii) The mentioning a wrong provision of law in a petition would not prevent the court from exercising its proper authority.

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26. **Lahore High Court**
M. Ihsan @ Malkoo etc. v. The State etc.
Criminal Appeal No.78896/2019
The State v. Ihsan @ Malkoo
Murder Reference No.361/2019
Hasnat Ahmad v. The State etc.
Criminal Revision No.2212/2020
Mr. Justice Asjad Javaid Ghural, Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2024LHC2091.pdf

Facts: The appellants have challenged the vires of judgment passed by ASJ in respect of offences u/s 302, 324, 337-F(i) & 34 PPC whereby they were convicted and sentenced. Murder Reference is sent up by trial court for confirmation or otherwise of death sentence of one of appellant and the complainant filed criminal revision seeking enhancement of sentence of respondent no. 02.

Issues: i) What is object of section 34 of PPC in holding a person responsible for a criminal act or wrong committed by another?
ii) What are pre-requisites for attracting the provisions of section 34 of PPC?
iii) Whether mere presence of a person with principal accused is sufficient to hold such person guilty of vicarious liability?
iv) Whether Court is bound only to record testimony of a person whose statement u/s 161 CrPC was recorded by police?
v) Whether mere relationship of the eye-witnesses with the deceased is sufficient to discard their evidence?
vi) Whether prosecution is bound to produce all witnesses?
vii) Whether question of quantum of sentence, requires utmost caution and thoughtfulness on the part of the Court?
viii) Whether any special circumstance is required to consider mitigation for converting the sentence of death into imprisonment for life?
ix) What is proper course for the courts, when a case qualifies the awarding of both sentences of imprisonment for life and that of the death?

Analysis: i) Ordinarily, every accused is individually responsible for a criminal act done by him. No one can be held responsible for an independent act or wrong committed by another. However, Section 34 PPC makes an exception to this principle. The main object for enactment of the aforesaid provision is to meet a case in which it is difficult to distinguish between act of each individual being members of a party who act in furtherance of common intention of all or to prove exactly what part was played by each of them. If A,B and C make a plan to kill D and in the execution of the crime, A buys a poison, B mixes it in food and C gives it to D, as a result of which D dies, it would be unjust to hold only C liable for murder.
ii) After survey of almost entire law qua the enactment of provisions of Section 34 PPC, the Apex Court lastly laid down following pre-requisites for attracting the provisions of aforesaid Section:- "(a) It must be proved that criminal act was done by various persons (b) The completion of criminal act must be in furtherance of

common intention as they all intended to do so. (c) There must be a pre-arranged plan and criminal act should have been done in concert pursuant whereof. (d) Existence of strong circumstances (for which no yardstick can be fixed and each case will have to be discussed on its own merits) to show common intention. (e) The real and substantial distinction in between `common intention' and `similar intention' be kept in view."

iii) Mere presence of the appellant with the principal accused in the absence of any pre-arranged plan or sharing of common intention between them is not sufficient to hold him guilty of vicarious liability.

iv) A proper procedure for recording of prosecution evidence, after framing of charge has been laid down in Section 265-F of Cr.P.C. Nowhere in the said section a prohibition has been contained that the Court is bound only to record the testimony of a person, whose statement U/S 161 Cr.P.C. was recorded by the police. Sub-Section (2) of said section reads as under:- "(2) The Court shall ascertain from the public prosecutor or, as the case may be, from the complainant, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon such persons to give evidence before it." Here in the instant case, said witness sustained injury during the occurrence and even his name was reflecting in the calendar of witnesses. The Medical Officer (PW-3), who conducted his medico legal examination ruled out any possibility of fabrication qua the injury sustained by him, therefore, none else is more aware of the facts than the said witness and his testimony cannot be excluded merely for the reasons that the Investigating Officer due to negligence or with malafide intention did not record his statement U/S 161 Cr.P.C.

v) It is well established principle in criminal administration of justice that mere relationship of the eye-witnesses with the deceased is not sufficient to discard their evidence, if the same was otherwise found confidence inspiring and trustworthy.

vi) Next objection of the defence was that one of the witnesses namely Azhar Hayat mentioned in the crime report was given up by the prosecution, so the inference could be drawn that he was not ready to support the prosecution version. This submission is repelled. It is well settled by now that the prosecution is not bound to produce all the witnesses. If the appellant was sure that this witness was not ready to support the prosecution witnesses, he had ample opportunity rather at liberty to examine him in his defence or even submit application before the trial Court to summon him as Court Witness but merely on that basis other overwhelming and confidence inspiring prosecution evidence cannot be discarded.

vii) It is well settled by now that question of quantum of sentence, requires utmost caution and thoughtfulness on the part of the Court.

viii) It is well settled that no special circumstance is required to consider mitigation for converting the sentence of death into imprisonment for life rather an iota of single instance is sufficient to justify lesser sentence.

ix) It is settled principle of law that when a case qualifies the awarding of both sentences of imprisonment for life and that of the death, the proper course for the Courts, as a matter of caution, is to give preference to the lesser sentence.

Conclusion: i) The main object for enactment of the aforesaid provision is to meet a case in which it is difficult to distinguish between act of each individual being members of a party who act in furtherance of common intention of all or to prove exactly what part was played by each of them.
ii) See above analysis No. ii.
iii) Mere presence of a person with principal accused in the absence of any pre-arranged plan between them is not sufficient to hold such person guilty of vicarious liability.
iv) There is no prohibition that the Court is bound only to record testimony of a person whose statement u/s 161 CrPC was recorded by police.
v) See above analysis No. v.
vi) The prosecution is not bound to produce all the witnesses.
vii) See above analysis No. vii.
viii) See above analysis No. viii.
ix) See above analysis No. ix.

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27. **Lahore High Court**
Manzoor Ahmad v. Muhammad Umar Farooq etc.
Crl. Misc. No. 78015/CB/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2024LHC2159.pdf

Facts: The petitioner, through this Application before the High Court, under section 497(5) of the Code of Criminal Procedure 1898, seeks cancellation of the pre-arrest bail of juvenile respondent, wherein he was granted pre arrest bail by the Court of Session.

Issues: i) Whether the juvenile justice system was designed to address the unique needs and circumstances of young individuals?
ii) Whether International law recognizes the importance of protecting the rights of juveniles?
iii) Whether Article 37 of The United Nations Convention on the Rights of the Child contains fundamental principles regarding child detention?
iv) Whether Article 40 of the UNCRC emphasizes the right of every child to be treated in a manner consistent with the promotion of their sense of dignity and worth?
v) Whether the best interests of the child is a dynamic and continually evolving concept?
vi) Whether Juvenile Justice System Act 2018, can be classified as both remedial and beneficial legislation?

vii) Whether courts should adopt a holistic and purposive approach while interpreting the JJSA?
viii) What the JJSA marks a paradigm shift in the treatment of juvenile offenders within the criminal justice system?

Analysis: i) The juvenile justice system is a specialized legal framework designed to address the unique needs and circumstances of young individuals who come into conflict with the law. It prioritizes rehabilitation, reintegration, and the best interests of the child. It contrasts with the adult criminal justice system, which primarily focuses on punishment and deterrence.

ii) The International law recognizes the importance of protecting the rights of juveniles in conflict with law. It aims to strike a balance between holding children accountable for their actions and providing them with the support and guidance they need to become productive members of society. The United Nations Convention on the Rights of the Child (UNCRC), adopted in 1989, is the most comprehensive international treaty addressing children's rights, including those in the aforementioned category.
iii) Article 37 of the UNCRC contains fundamental principles regarding child detention. It mandates that States Parties take measures to ensure the following: (a) No child should endure torture or any form of cruel, inhuman, or degrading treatment or punishment. Furthermore, individuals who are under eighteen years of age should not be subjected to capital punishment or life imprisonment without the possibility of release for their offences. (b) No child should be deprived of their freedom unlawfully or arbitrarily. A child's apprehension, confinement, or incarceration must comply with legal provisions and should only occur as a last resort and for the shortest appropriate duration. (c) Every child deprived of liberty should be treated with dignity and humanity. They should be separated from adults unless it is deemed in their best interest not to do so. They should have the right to maintain contact with their family through correspondence and visits, unless extraordinary circumstances warrant otherwise. (d) Every child deprived of liberty should have prompt access to legal and other necessary assistance. They should also have the right to contest the legality of their detention before a court or another competent, impartial authority, with a guarantee of swift resolution.
iv) Article 40 of the UNCRC emphasizes the right of every child to be treated in a manner consistent with the promotion of their sense of dignity and worth, which reinforces their respect for human rights and the fundamental freedoms of others. The Article stipulates that children accused of breaking the law should only be charged for acts that were illegal when committed, and they must be presumed innocent until proven guilty. It mandates prompt notification of charges, access to legal assistance, and a fair trial conducted by an impartial authority. The Article also prohibits coercion to confess guilt and ensures the right to challenge evidence and have decisions reviewed. It emphasizes the need to respect children's privacy throughout legal proceedings. Furthermore, the Article promotes the establishment of specialized laws and procedures for juvenile offenders and

suggests non-judicial approaches when appropriate, provided human rights and legal safeguards are upheld. Lastly, it advocates for various interventions, including counselling and education programs, to address the well-being of children involved in legal matters proportionately to their circumstances and the severity of the offence.

v) The best interests of the child is a dynamic and continually evolving concept. General Comment No.14 (2013)10 provides a framework for assessing it in any given situation. The CRC Committee has stated that it has three dimensions: (a) a substantive right, (b) a fundamental interpretative legal principle, and (c) a rule of procedure. The substantive right ensures that children have their best interests evaluated and given paramount consideration in decision-making processes, applicable to individual children, specific groups, or children in general, as Article 3, paragraph 1 of UNCRC mandates. As a fundamental interpretative legal principle, it dictates that if a legal provision is open to more than one interpretation, the construction which most effectively serves the child's best interests should be chosen, guided by the rights enshrined in the Convention and its Optional Protocols. As a rule of procedure, it mandates that whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child requires procedural guarantees. The Committee emphasizes that in criminal proceedings, the best interests principle applies to children in conflict (i.e. alleged, accused or recognized as having infringed) or in contact (as victims or witnesses) with the law, as well as children affected by the situation of their parents in conflict with the law. The CRC Committee underlines that the traditional objectives of criminal justice, such as repression or retribution, must give way to rehabilitation and restorative justice objectives when dealing with child offenders.

vi) The JJSA can be classified as both remedial and beneficial legislation. On the one hand, the Act aims to remedy deficiencies within the juvenile justice system by establishing procedures and standards for the treatment of juvenile offenders. It seeks to ensure that juveniles are treated fairly, provided with necessary support and services, and given opportunities for rehabilitation and reintegration into society. In this sense, it is a remedial legislation. On the other hand, by prioritizing the rights and rehabilitation of juvenile offenders, the Act contributes to their overall well-being and aims to prevent further harm or injustice. Therefore, it can also be considered a form of beneficial legislation. The JJSA also aligns with the concept of social welfare legislation because of its broader implications for promoting the well-being of juveniles and society as a whole.

vii) The courts should adopt a holistic and purposive approach while interpreting the JJSA, considering its remedial objectives in reforming the juvenile justice system and its beneficial aims in promoting the well-being of juvenile offenders and society. In doing so, they should be guided by the above international standards and principles. When construing section 6 of the JJSA, courts would

also consider the principle of lenity, which suggests that they should lean towards the interpretation favouring the accused.

viii) The JJSA marks a paradigm shift in the treatment of juvenile offenders within the criminal justice system. It modifies and amends the law relating to them by focusing on the disposal of their cases through diversion and facilitating their rehabilitation. Recognizing their unique vulnerabilities and the necessity for support, it provides that all offences except heinous ones are to be treated as bailable. However, the practical application of section 6(3) of the JJSA has raised a critical issue. It would be absurd to say that an offence would be considered bailable when a juvenile applies for post-arrest bail and otherwise if he approaches the court for anticipatory bail. In other words, the bail process should not be contingent upon whether a juvenile is seeking post-arrest bail or anticipatory bail because it would introduce an arbitrary distinction that runs counter to the overarching objectives of the JJSA. A juvenile's eligibility for bail should be determined based on the nature of the offence and the specific circumstances of the case rather than the procedural mechanism through which bail is sought.

Conclusion

i) The juvenile justice system is a specialized legal framework designed to address the unique needs and circumstances of young individuals.

ii) The International law recognizes the importance of protecting the rights of juveniles in conflict with law.

iii) Article 37 of the UNCRC contains fundamental principles regarding child detention.

iv) Article 40 of the UNCRC emphasizes the right of every child to be treated in a manner consistent with the promotion of their sense of dignity and worth.

v) The best interests of the child is a dynamic and continually evolving concept.

vi) The JJSA can be classified as both remedial and beneficial legislation.

vii) The courts should adopt a holistic and purposive approach while interpreting the JJSA.

viii) The JJSA marks a paradigm shift in the treatment of juvenile offenders within the criminal justice system.

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28. **Lahore High Court**
Waqas Yaqub v. Adeel Yaqub and another
F.A.O.No.88 of 2023
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC2144.pdf

Facts: The Appellant filed this First Appeal under Section 39 of the Arbitration Act, 1940 against order whereby Civil Judge, proceeded to dismiss his application under Section 34 of the Arbitration Act, 1940.

Issues: i) Whether request for adjournment and filing of power of attorney or Application under Section 34 of the Act, without filing anything else amounts to "stepping into proceeding".

ii) What is the conditions precedent for applying under Section 34 of the Arbitration Act, 1940?
iii) How does the court determine whether to grant a stay under Section 34, considering the requirement to ensure the party applying for stay has not abandoned their right to invoke arbitration after initiating the suit?
iv) What is the test of "STEP IN PROCEEDINGS"?
v) What is the legal status of a pronouncement made by the Supreme Court of Pakistan regarding a question of law, particularly when it is made with the intention of settling the law?
vi) What is the intent of the legislature behind Section 34 of the Arbitration Act, 1940?

Analysis: i) Plain reading of above provision of law makes clear the concept of "step in proceedings" which requires to display unequivocal intention to proceed with the suit and to abdicate right to have matter disposed of through arbitration. (…) The law required that the conduct of the Appellant, in order to be termed as "a step in the proceedings" should have been such as would manifestly display an unequivocal intention to proceed with the suit and give up the right to have the matter disposed of by arbitration. In this connection, the proceedings of the suit reproduced above depict that Appellant had joined Court proceedings on 08.06.2023, when the Presiding Officer was not available on account of some departmental training and on very next date on 24.06.2023 again the Presiding Officer concerned was on casual leave, whereas next order dated 06.07.2023 reflects the only adjournment granted by the Trial Court itself on request of the Appellant for filing of written statement. In such like situation, it has been held in the judgment cited as "Messrs SGEC-AMC JV through Authorized Officer Vs. National Highway Authority through Chairman" (2024 CLD 301) that "a single adjournment granted by the Court in routine, requiring the defendant to file a power of attorney and/or the written statement cannot be termed as 'a step in the proceedings'." Moreover, it is observed in case "BNP (Pvt.) Limited Vs. Collier International Pakistan (Pvt.) Limited" (2016 CLC 1772) that "a single adjournment granted by the Court in routine, requiring the defendant to file a power of attorney and a written statement cannot be termed as 'a step in the proceedings'."
ii) Conditions precedent for application under Section 34 of the Act are that the party applying for stay has not filed written statement or taken "any other steps in the proceedings" indicating that right to invoke arbitration clause is intentionally abandoned in favour of Court proceedings.
iii) Whether to grant stay or not is dependent upon satisfaction of the Court and such order is to be passed by the Court only when it is satisfied that all the requirements and preconditions enumerated have been fulfilled. However, the Court has to necessarily satisfy itself that the party applying for stay has not relinquished or abandoned his right of invoking arbitration clause after filing of suit. In coming to such conclusion the facts and circumstances of each particular

case are to be examined in the light of pleas and other steps taken by the parties. The primary duty of a Court is to look into the facts of the case fairly and squarely and then to decide whether the conduct of the applicant is such as would amount to a participation in the suit itself or an indication of acquiescence in its proceedings. If so, an application under Section 34 of the "Act" would be barred for the simple reason that a party is not allowed to ask for staying the proceeding when he has clearly and willingly participated in them in a manner which can be construed acquiescence therein. If his conduct is such as would indicate that he has acquiesced in the suit, he is shut out from claiming the benefit of the Section 34 of the said Act.

vi) the test for stepping in proceedings for the purpose of said provision of law are: i. whether the party sought an adjournment for filing the written statement; ii. whether the moved application, the contents whereof as well as all the surrounding circumstances that led the party to make the application, display an unequivocal intention to proceed with the suit, and to give up the right to' have the matter disposed of by arbitration. iii. An application of such nature, therefore, should prima facie be construed as a step in the proceedings within the meaning of section 34.

v) It is settled principle that where the Supreme Court deliberately and with the intention of settling the law, pronounces upon a question of law, such pronouncement is the law declared by the Supreme Court within the meaning of Article 189 of the Constitution and is binding on all Courts in Pakistan.

vi) The narration of Section 34 ibid makes intent of legislature quite clear that purpose thereof is to drive parties to approach the medium of arbitration first prior to setting in litigation through any other suit, as per their own agreement. The course and mode of arbitration is globally recognized for the purpose of fair and efficient settlement of dispute arising in domestic and international commercial relations. The Courts are always required to support the arbitration proceedings and process to meet with object of the "Act" destined at for cost free, efficacious, effective and amicable resolution of disputes amongst parties.

Conclusions: i) No, a single adjournment granted by the Court in routine, requiring the defendant to file a power of attorney and/or the written statement cannot be termed as 'a step in the proceedings' because the concept of "step in proceedings" requires displaying unequivocal intention to proceed with the suit and to abdicate right to have matter disposed of through arbitration

ii) Conditions precedent for application under Section 34 of the Act are that the party applying for stay has not filed written statement or taken "any other steps in the proceedings" indicating that right to invoke arbitration clause is intentionally abandoned in favour of Court proceedings.

iii) The Court must necessarily satisfy itself that the party applying for stay has not relinquished or abandoned his right to invoke an arbitration clause after filing of suit. In coming to such a conclusion, the facts and circumstances of each case are to be examined in the light of pleas and other steps taken by the parties.

iv) See the analysis portion No.iv.

v) Where the Supreme Court deliberately and with the intention of settling the law, pronounces upon a question of law, such pronouncement is the law declared by the Supreme Court within the meaning of Article 189 of the Constitution and is binding on all Courts in Pakistan.

vi) The narration of Section 34 of the Arbitration Act, 1940 makes intent of legislature quite clear that purpose thereof is to drive parties to approach the medium of arbitration first prior to setting in litigation through any other suit, as per their own agreement.

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29. **Lahore High Court**
Khalid Mahmood v. The State and another
Criminal Appeal No. 454-ATA of 2023.
Mr. Justice Muhammad Waheed Khan, Mr. Justice Sadiq Mahmud Khurram.
https://sys.lhc.gov.pk/appjudgments/2024LHC2029.pdf

Facts: Criminal Appeal is filed by accused person against his conviction and sentence passed in respect of offences under sections 11-F(2),11-F(6),11-G,11-N,11-I, 11-J and 11-EE(4) of the Anti-Terrorism Act, 1997.

Issues: i) Whether non-production of eyewitness of the arrest and recovery in the evidence who also took the complaint to the police station for the registration of FIR is fatal to prosecution case?

ii) What are the conditions in which the production of secondary evidence is allowed to prove a document?

iii) Whether any permission of the Court is required for data retrieval from any mobile phone recovered from a suspect without his consent?

iv) Whether a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused?

Analysis: i) Additionally, the said Imdad Hussain 30/CPL, who took the complaint (Exh.PC) to the police station for the registration of FIR, was neither cited as a witness nor his statement under section 161 Cr.PC was recorded nor he was examined as a witness during the trial of the case though he was also an eye witness of the arrest of the appellant and the recovery from the appellant. This aspect of the case has convinced our minds that the whole prosecution case is a figment of the imagination of Muhammad Ashraf 595/UO (PW-3), the complainant of the case.

ii) The provisions of Article 76 of the Qanun-e-Shahadat Order, 1984, declare the conditions in which the production of secondary evidence is allowed to prove a document and it is provided that the same can be done if it is proved that the original document is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person legally bound to produce it, and when, after the notice mentioned in Article 77 of the Qanun-e-Shahadat Order, 1984, such person does not produce it or when the

original has been destroyed or lost or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time.

iii) We are also seriously concerned about the extraction of data from a personal mobile phone, may be of an accused, without his consent; which is not a good practice as it opposes to constitutional guarantee of the right to privacy and we feel that if the accused was not ready to accord consent, then at least permission from magistrate should have been taken. Though in this case, the Anti-Terrorism Court supervised the processes of investigation whenever needed but we have not found any such permission in the record nor the learned Deputy Prosecutor General has shown the same to us, therefore, retrieval of data from the mobile phone device (P-6) of the appellant without the consent of accused amounts to self-incrimination prohibited under Article 13 of the Constitution of the Islamic Republic of Pakistan, 1973, therefore, such evidence is ruled out from consideration.(…) Above expression in Article 13(b) of the Constitution of the Islamic Republic of Pakistan, 1973 clearly indicates that no one can be compelled to be a witness against himself. All above references of law clearly speak that the acquisition of data stored in an information system or seizure of any articles containing such data requires the intervention of the Court either by obtaining a warrant in this respect or otherwise an intimation to the Court after such seizure within 24 hours. Therefore, when any mobile phone is recovered from a suspect, and any data retrieval whereof from the said phone is essential for criminal investigation, it could only be obtained with the permission of the concerned Court with strict regard to privacy rights guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973.

iv) In criminal cases the burden of proving its case lies on the prosecution and the prosecution is duty bound to prove the case against the accused through reliable evidence, direct or circumstantial and that too beyond reasonable doubt. Besides this, it is a settled principle of law, that if there is an element of doubt as to the guilt of an accused, the benefit of that doubt must be extended to him. The doubt of course must be reasonable and not imaginary or artificial. The rule of benefit of the doubt, which is described as the golden rule, is essentially a rule of prudence which cannot be ignored while dispensing justice in accordance with the law. Considering all the above circumstances, we entertain serious doubt regarding the involvement of the appellant in the present case. It is a settled principle of law that for giving the benefit of doubt, it is not necessary that there should be so many circumstances rather, if only a single circumstance, creating reasonable doubt in the mind of a prudent person, is available, then such benefit is to be extended to an accused not as a matter of concession but as of right.

Conclusions: i) Yes, non-production of eyewitness of the arrest and the recovery in the evidence who also took the complaint to the police station for the registration of FIR is fatal to prosecution case.

ii) See above analysis No. ii.

iii) When any mobile phone is recovered from a suspect, and any data retrieval whereof from the said phone is essential for criminal investigation, it could only be obtained with the permission of the concerned Court with strict regard to privacy rights.
iv) A single circumstance which creates doubt regarding the prosecution case is sufficient to give benefit of doubt to the accused.

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30. **Lahore High Court**
Abdul Rasheed v. Mehboob-ul-Hassan & another.
Civil Revision No.257/2020
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2024LHC1946.pdf

Facts: Instant Civil Revision is directed against concurrent decisions, in terms whereof, suit for specific performance instituted by respondent, was decreed by the trial court and affirmed by first appellate court.

Issues: i) Whether written statement per se has any evidentiary value?
ii) Whether admissibility and proof of execution of documents are different concepts?
iii) Whether it is necessary to produce the scriber of document to prove its execution?
iv) What is the effect of withholding the best piece of evidence?
v) Whether subsequent suit could be decreed based on previous agreement to sell when claim of novation of contract was pleaded, though not proved, without dealing with the question of limitation and bar contained in Order II Rule (2) CPC?

Analysis: i) Even otherwise, written statement per se has no evidentiary value, and anything stated therein cannot per se be treated as piece of evidence, unless proved upon meeting requirements of confrontation – principles enshrined in Article 140 of the Order 1984.
ii) Mere production of certified copy of the application/statements, signed by the lawyers on behalf of their respective clients, cannot be treated as alternate for the requirement to prove factum of compromise reached, and mediated agreement. And respondent failed on this count. Admissibility and proof of execution of documents are different concepts.
iii) Scribe of Exh.P-3 was not produced without any plausible explanation for such inability. This constitutes non- compliance of Article 78 of Order 1984, which requires that handwriting of the author of the document had to be proved.
iv) Failure of respondent No.1 to produce material witnesses fortifies presumption that if those witnesses are produced, they are likely to prejudice the case of respondent–this attracts principle of adverse inference in terms of Article 129 of Qanun-e-Shahadat, 1984.
v) When factum of alleged compromise and execution of Exh.P-3 remained

disproved, plea of novation of contract fails. If there is no novation, no question of protection from rigours of Order II Rule (2) of CPC could be claimed. Since respondent No.1 had pleaded novation, who cannot, upon failing to prove novation, seek decree of specific performance on previous contract–which otherwise became unenforceable by virtue of limitation, by the time subsequent suit was instituted.

Conclusions: i) The written statement per se has no evidentiary value, and anything stated therein cannot per se be treated as piece of evidence, unless proved upon meeting requirements of confrontation–principles enshrined in Article 140 of the Order 1984.

ii) Production of documents and their admissibility as well as the proof and probative value carried by such documents are entirely two different things and should never be used or construed interchangeably.

iii) Yes, it is necessary to produce the scriber of document to prove its execution because Article 78 of Order 1984 requires that handwriting of the author of the document had to be proved.

iv) If the best piece of evidence is withheld by a party, then adverse presumption against such party could be drawn by the court in terms of Article 129 of Qanun-e-Shahadat, 1984.

v) No subsequent suit could be decreed based on the previous agreement to sell when claim of novation of contract was pleaded, but not proved, and without dealing with the question of limitation and bar contained in Order II Rule (2) CPC.

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31. **Lahore High Court**
Ashiq Ali & others v. Ghulam Ali (deceased) through legal heirs, etc.
Civil Revision No.68828 of 2023
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC2058.pdf

Facts: This Civil Revision, filed under Section 115 of the Code of Civil Procedure, 1908, is directed against the judgment and decree of appellant Court, whereby, the appeal preferred by respondents was allowed and resultantly dismissed the petitioners' suit for declaration with permanent injunction.

Issues: i) Which procedure is to be followed for the allotment by the tenants?

ii) What if the tenant fails to provide the required information or wilfully furnishes incomplete or false declaration?

iii) Which directions are to be followed to ensure that mistakes have not been incorporated in the statements LR-XIV and LR-XV?

iv) Whether in case of joint tenancies the tenants should be allotted the land jointly or individually?

v) Whether there is any responsibility of the concerned Patwari or Revenue Officer and Assistant Commissioner regarding the verification of record provided by the tenants?

vi) Who will maintain Girdawari and "Register Taghayyurat-e-Kasht" as per Rule 39 of the Land Revenue Rules, 1968?

vii) What is the procedure of alteration of an entry once made in the Register Girdawari by Patwari?

Analysis: i) Through Notification No.DSH-473/72/6514- LC(II), dated 11th May, 1972 as modified by Notification No.DSL-946-72/3320-LC(II), dated 18th August, 1972 declared that tenants claiming allotment of surrender and resumed land under sub-paragraphs (1) & (2) of paragraph 18 of MLR 115 of 1972 shall submit declaration in the From LR-XI at any time before the allotment and the allotment shall depend upon the information supplied by the tenant in the said form and said form should be accompanied a certificate that the information is accurate and complete in all respect ….From LR-XI should be submitted personally or through authorized agent to the Deputy Land Commissioner of the district, where the surrendered and resumed land in the cultivating possession of the applicant is situate. … In case the applicant is illiterate, should affix his thumb impression while furnishing the certificate at the end of the Form, which should be attested by a literate person.

ii) If the tenant fails to provide the required information or wilfully furnishes incomplete or false declaration shall liable to action under paragraph 30 of MLR-115 of 1972 which provides rigorous imprisonment for a term which may extend to 07 years in addition to forfeiture of all or part of his immovable property to Government. … If tenant fails to provide the required information or willfully furnishes incomplete or false declaration then he was liable to action under paragraph 30 of MLR-115 of 1972.

iii) It was also directed that statement LR-XIV showing the name and full particulars of the tenants in cultivating possession during the harvests and statement LR-XV showing the particulars of land that was not in cultivating possession of a tenant are to be prepared. These statements are to be verified and certified personally by the Revenue Officer of the Haqla, and the Assistant Commissioner. Not less than 25% of the entries in the statements are to be checked personally by the Deputy Land Commissioner to ensure that mistakes have not been incorporated in the statements. In order to safeguard against any possibility of names of genuine cultivating tenants being excluded and names of undeserving tenants not qualified for allotment being included, it has, further been directed that the statement LR-XIV and LR-XV should be verified and certified personally by the Revenue Officer of the Halqa and the Assistant Commissioner concerned in the revenue estate itself in a 'Jalsa-e-Aam'. Before this verification seven days advance notice should be given to the villagers that an inquiry is to who were in cultivating possession of the resumed land during Kharif 1971` and Rabi 1971-72 would be made by the Revenue Officer/Assistant Commissioner on

the date to be indicated in the notice and that objections would be invited from person disputing the entitlement of the tenants claiming allotment.

iv) To answer a question with regard to "joint tenancies", through Letter No.DSL-1186072/6227-LC(II) dated 27.11.1972 observed that a question has also arisen whether in case of joint tenancies the tenants should be allotted the land jointly or individually. According to the provisions of paragraph 18(1) and (2), the land resumed is to be granted free of charges to the tenants who are shown in the revenue records to be in cultivating possession of it in Kharif 1971 and Rabi 1971-72 and declared that the names of all the tenants should be shown together in the allotment order along with their respective shares. … In case of joint tenancies, the resumed land was to be allotted in the names of all the tenants according to their shares. It was not necessary that the tenant was actually cultivating the land. If he was shown cultivating possession in the revenue record then he was entitled for allotment. Right of appeal, revision and review was also available to the aggrieved party.

v) It was also Standing Instructions to the concerned Patwari to provide information through preparing Statement LRXIV showing the names and full particulars of the tenants in cultivating possession during the harvest and through statement LR-XV showing particulars of land which was not in cultivating possession of a tenant. Said statements were required to be verified by the concerned Revenue Officer and the Assistant Commissioner. Through an inquiry in a Jalsa-e-Aam held in the concerned estates by giving notices to the villagers that an inquiry as to who were in cultivating possession of the resumed land during Kharif 1971 and Rabi 1971-72 and inviting the objections from persons disputing the entitlement of the tenant claiming allotment scrutinized the claim of a tenant. In case of any dispute to ascertain the actual cultivating possession, then Canal Girdwari and Khatoni can also be checked and compared for verification. The Revenue Officer was also bound to ensure that the entries in LR-XVI and LR-XVII were fully corroborated with the entries in the Khasra Girdwari for the relevant period.

vi) Rule 39 of the Land Revenue Rules, 1968 describes that for each estate a crop inspection register (Girdawari) shall be maintained, in Form XXIV and similarly for each estate a register of changes in cultivation, possession and rent to be known as the shall also be maintained by the Patwari in Form XXIV-A in which he will enter such harvest-wise changes as are not disputed and will incorporate the same in the "Register Girdawari" after due checking and attestation thereof by the Field Kannugo and the Circle Revenue Officer. …The crops will be entered in the Register Girdawari as the inspection proceeds. The changes in rights, rents and possession will be noted in the appropriate column. To prevent any error, the Patwari enter his diary a list of all field numbers in which any change of cultivating occupying or rent has occurred and place this list before the field Kannugo at his next visit for verification. Similarly in the Register Taghayyurat-e-Kasht he will enter harvest-wise all changes of cultivating possession, rent, etc. which are undisputed.

vii) Whenever a Patwari has to alter an entry once made in the Register Girdawari, he must enter it in his diary but no such alteration should be made after the 'Dhal Bachh' of the harvest have been drawn up or corrected except with the sanction of the Collector which may be given for the correction of clerical or patent mistakes only. … The field Kannugo is bound to inspect the Patwari's diary and he should check the alterations which have been made in the Register very carefully. Said entries of Register Girdawari would be enter in the Register Haqdarana Zamin. If at the time of preparation of the Register Haqdaran Zamin an entry in the Register Girdawari is found to be incorrect, it will nevertheless be retained unaltered, but the correct entry will be noted in red ink and will be attested by the Kannugo. …A proper procedure is provided for maintaining and preparing the Register Girdawari. The concerned Patwari is bound to enter the Girdawari after inspection. Any change in the existing Girdawari is also entered in a separate Register and duly verified. Said entries of Register Girdawari are entered in the Register Haqdaran Zamin and after preparation of the Register Haqdarana Zamin, the Register Girdawari will be destroyed after twelve years.

Conclusion: i) See above analysis No. i.
ii) If the tenant fails to provide the required information or wilfully furnishes incomplete or false declaration shall liable rigorous imprisonment for a term which may extend to 07 years in addition to forfeiture of all or part of his immovable property to Government.
iii) See above analysis No. iii.
iv) In case of joint tenancies, the resumed land was to be allotted in the names of all the tenants according to their shares.
v) See above analysis No. v.
vi) As per Rule 39 of the Land Revenue Rules, 1968 patwari will maintain Girdawari and "Register Taghayyurat-e-Kasht".
vii) A proper procedure is provided for maintaining and preparing the Register Girdawari. The concerned Patwari is bound to enter the Girdawari after inspection. Any change in the existing Girdawari is also entered in a separate Register and duly verified. Said entries of Register Girdawari are entered in the Register Haqdaran Zamin and after preparation of the Register Haqdarana Zamin, the Register Girdawari will be destroyed after twelve years.

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32. **Lahore High Court**
M/s A & A Pipe Industries, etc. v Federation of Pakistan, etc.
Writ Petition No.26907 of 2024
Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC2046.pdf

Facts: Through this Constitutional Petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioners have called into question the vires, validity and legality of conclusion of sunset review whereby the National

Tariff Commission while deciding the review decided to continue definitive Anti-Dumping Duties for another period.

Issues: i) Whether any act, proceedings or decision of the Commission shall be invalid by reason only of the existence of a vacancy or defect in the constitution of commission?

ii) Whether section 70 of the National Tariff Commission Act 2015, stipulates a comprehensive scheme of exercising appellate Jurisdiction by the Appellate Tribunal constituted under Section 64 of the Act?

iii) Whether the right to appeal is provided to ensure safe administration of justice?

iv) Whether the writ jurisdiction of the High Court can be exploited as the sole solution or remedy for ventilating all miseries, distresses and plights regardless of having equally efficacious, alternate and adequate remedy provided under the law?

Analysis: i) No act, proceedings or decision of the Commission shall be invalid by reason only of the existence of a vacancy or defect in the Constitution of Commission.

ii) The Section 70 of the Act is an exhaustive provision, which does not only provide the substantive right of appeal and time limitation for preferring and decision of the same but it also lays down the procedural requirements for carrying out the whole appellate procedure. It stipulates a comprehensive scheme of exercising Appellate Jurisdiction by the Appellate Tribunal constituted under Section 64 of the Act against appeal preferred by an interested party either against initiation of investigation, preliminary determination or final determination and also provides limitation to as well as it also provides the procedure for hearing the same including chalking out the requirements for a decision of the Tribunal. Moreover, subsection (13) lays down the substantive right of appeal against the decision of the Appellate Tribunal to the High Court. This whole scheme of remedial procedure is clearly suggestive of the fact that a Determination even though a Final Determination under Section 39 is not absolute and is open for scrutiny before the Appellate Tribunal if any interested party, dissatisfied with the same, prefers an appeal before it. It is further evident that the decision of the Appellate Tribunal pronounced under subsection (9) of Section 70 is further open to judicial examination by the High Court under subsection (13) if an interested party still feels dissatisfied prefers so. These two-fold remedies are itself provided by the Act to an interested party whose rights have been determined and adjudged by the Commission and the Appellate Tribunal contrary to his interests and contradictory to the law in his understanding.

iii) The right of appeal is always provided by the law to ensure safe administration of justice and to enable an independent higher forum to dissect the decisions of the lower forum on the scale of true spirit and interpretation of law involved in the matter and to ascertain that no miscarriage of justice was caused by the lower forum. The purpose of providing an Appellate authority is always to further the

cause of justice and to rule out the probability of wrong decision rendered by the first judicial forum or the First Appellate Authority either due to mistake of fact or wrong application of law. Whenever an appeal is preferred by a discontented party before the Appellate Forum/Appellate Tribunal in a case, the said Appellate body is competent to set aside, affirm or modify the decision under appeal and if right of further appeal is available to a party against such decision, the second Appellate body, as in case before the High Court, can similarly affirm, vary or alter the decision of the lower Appellate forum/the Appellate Tribunal.

iv) The writ jurisdiction of the High Court cannot be exploited as the sole solution or remedy for ventilating all miseries, distresses and plights regardless of having equally efficacious, alternate and adequate remedy provided under the law which cannot be bypassed to attract the writ jurisdiction. The doctrine of exhaustion of remedies stops a litigant from pursuing a remedy in a new court or jurisdiction until the remedy already provided under the law is exhausted. The profound rationale accentuated in this doctrine is that the litigant should not be encouraged to circumvent or bypass the provisions assimilated in the relevant statute paving the way for availing remedies with precise procedure to challenge the impugned action.

Conclusion: i) No act, proceedings or decision of the Commission shall be invalid by reason only of the existence of a vacancy or defect in the Constitution of Commission.
ii) Section 70 stipulates a comprehensive scheme of exercising Appellate Jurisdiction by the Appellate Tribunal constituted under Section 64 of the Act against appeal preferred by an interested party either against initiation of investigation, preliminary determination or final determination.
iii) The right of appeal is always provided by the law to ensure safe administration of justice and to enable an independent higher forum to dissect the decisions of the lower forum on the scale of true spirit and interpretation of law involved in the matter and to ascertain that no miscarriage of justice was caused by the lower forum.
iv) The writ jurisdiction of the High Court cannot be exploited as the sole solution or remedy for ventilating all miseries, distresses and plights regardless of having equally efficacious, alternate and adequate remedy provided under the law which cannot be bypassed to attract the writ jurisdiction. .

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33. **Lahore High Court**
Amjad Ali v The State etc.
Criminal Appeal No.195087 of 2018.
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC1934.pdf

Facts: The appellant was prosecuted in case FIR registered under Section 376(i) PPC. Learned trial court through its judgment has convicted and sentenced him. The appellant has assailed the said judgment through this Criminal Appeal.

Issues: i) What is the effect of apparent delay in reporting the matter to the police?
ii) Whether any inference can be drawn if investigating officer does not collect anything incriminating from place of occurrence?
iii) What is evidentiary value of contention about abrasions on body during scuffle without medical opinion?
iv) Whether hymen can be healed up in five days after commission of rape?

Analysis: i) When there is apparent delay in reporting the matter to the police and lodgment of the FIR and no explanation whatsoever is available on the record for such delay then, the possibility of due deliberation and consultation by the complainant before reporting the occurrence to the police cannot be ruled out of consideration.
ii) If the investigating officer does not collect anything incriminating from place of occurrence then it can make place of occurrence disputed.
iii)If contention about abrasions on body during scuffle is not materialized through the medical opinion then the witness is not truthful however, claim of resistance/scuffle with accused/appellant could have been taken as a corroborative effect if complete medical examination throws some other form of aggression.
iv) Study shows that only mild submucosal hemorrhages disappear within 3 to 4 days, whereas "marked" hemorrhages persist for 11 to 15 days; therefore, if the rape is committed with any victim forcibly, then in five days hymen cannot be healed up.

Conclusion: i) When there is apparent delay in reporting the matter to the police then, there is possibility of due deliberation and consultation.
ii) If the investigating officer does not collect anything incriminating from place of occurrence then it can make place of occurrence disputed.
iii) If contention about abrasions on body during scuffle is not materialized through the medical opinion then the witness is not truthful.
iv) Hymen cannot be healed up in five days after commission of rape.

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34. **Lahore High Court**
Mehmood v. The State, etc.
Crl. Misc. No. 10-T 2024
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC1980.pdf

Facts: Through this petition filed u/s 526 of CrPC, petitioner seeks transfer of trial of a criminal case registered under Sections 324/336/109-PPC to any other Court of competent jurisdiction, at District Headquarter.

Issues: i) Whether apprehension in the mind of a party about injustice at the hands of presiding officer is a ground for transfer of a case?
ii) How bias of a judge can be ascertained and whether mere suspicion of bias renders the decision of a judge void?
iii) Whether a judge who is interested in subject matter of case should hear such

case?

iv) Whether a Magistrate can sit to hear the case if he had practiced as a pleader in the court of Magistrate in such district?

v) Who has duty to ensure that all necessary and reasonable enquiries are made and the responses taken in accordance with the law or the requirements of fair trial?

Analysis: i) It is trite that mere apprehension in the mind of a party about injustice at the hands of presiding officer is no ground for transfer of a case unless it is supported by any material or the circumstances.

ii) Bias of a judge can be projected or highlighted through petition for seeking transfer of case, if it is ascertained from his action or from any other material on the record. Supreme Court of Pakistan while dealing with application for transfer of case highlighted different situations as examples of bias for disqualification of judge to hear the case and held that if bias is based on pecuniary or proprietary interest, small the interest may be, it operates as a disqualification but mere suspicion of bias, even it is not unreasonable, is not sufficient to render decision void. Bias of a magistrate or judge can also be gauged from the fact that he has not allowed the prosecutor to conduct trial and himself took the position as prosecutor, then whole trial stands vitiated.

iii) Halsbury says that the principle, "nemo debt esse judex in causa propria sua" precludes a justice who is interested in the subject-matter of a dispute, from acting as a justice therein". It is the principle of Natural Justice. According to this maxim, the authority giving decision must be composed of impartial persons and should act fairly, without prejudice and bias… Similar principle is in vogue in our jurisdiction as embodied in section 556 of Cr.P.C… Magistrate or Judge however, shall not be considered as party or personally interested if the situation is like one mentioned in the explanation attached to above section…

iv) A Magistrate cannot sit to hear the case if he had practiced as a pleader in the court of Magistrate in such district as mentioned in section 557 of Cr.P.C. As a result, thereof he can recuse from the case.

v) Adversaries in a criminal prosecution, no doubt, are the private parties but State as an important and impartial pillar in between two through the institution of Public Prosecution, is expected to ensure fair trial, due process and equal opportunities to both parties so as to fade out the impression of bias in the mind of a judge against any party. As per para 4.17 of Code of Conduct for Prosecutors issued under section 17 of the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006 it is the duty of a prosecutor that in accordance with the law or the requirements of fair trial, he shall seek to ensure that all necessary and reasonable enquiries are made and the responses taken into account while taking prosecutorial decisions.

Conclusion: i) It is trite that mere apprehension in the mind of a party about injustice at the hands of presiding officer is no ground for transfer of a case unless it is supported

by any material or the circumstances.
ii) See analysis no. 02.
iii) A judge who is interested in subject matter of case shall not hear such case.
iv) A Magistrate cannot sit to hear the case if he had practiced as a pleader in the court of Magistrate in such district as mentioned in section 557 of CrPC.
v) See analysis no. v.

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35. **Lahore High Court**
Sadia Aziz v. DPO etc.
Writ Petition No. 3109-H of 2024
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC2076.pdf

Facts: Petitioner being mother through this petition seeks custody of her minor son reportedly in the illegal and improper custody of respondent/father of the minor.

Issues: i) Whether a mother, having once waived her right to custody (hizanat) of a minor, cannot reclaim this right at a later time?
ii) What is difference between 'Walayat' and 'Hizanat' with reference to Custody of minor child?
iii) In case of conflicting views expressed in text books on Muslim Law, how are the Courts to determine which view is correct?
iv) What is Shia law regarding Hizanat (custody) of minors concerning the duration of the mother's entitlement to custody?
v) What are the custody rights accorded to mother under Shafi'i Islamic law concerning her daughter?
vi) Whether right to retain custody of child continues with mother after she is divorced by the father of the child?
vii) What are the conditions which disqualify females from the custody of children?
viii) How does Section 491 of the Cr.P.C. empower the High Court to address cases of unlawful detention, and what are the two primary functions of the High Court under this section?
ix) How do the provisions of Section 491 of the Criminal Procedure Code (Cr.P.C.) and Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 intersect in providing relief for individuals in unlawful custody, and how do the High Court Rules and Orders regulate the procedures for both types of petitions?
x) Whether order for recovery of minor can be issued under Article 199 of the Constitution?

Analysis: i) The main stay of the respondent was that once the mother waived her right to take custody, she is precluded to make a re-attempt. Right of hizanat of a mother is recognized in Islam as well as in law; claim of the respondent being guardian of the minor would obviously give way to the right of hizanat till prescribed age of

the minor under the law. The waiving of her right of hizanat has no binding force in the eyes of law and mother cannot be held accountable if at one occasion she had given up her right to hizanat on any condition. She will retain her right of hizanat when there is no disqualification in law of her waiver, therefore, is not disentitled for claiming right of hizanat again.

ii) It is essential to highlight that there is difference between Walayat (Guardianship) and Hizanat (Custody); in Muslim Law, as in almost every other system of law, the father is the natural guardian of the person and property of his minor child but Islam recognizes the mother as having prior right of custody, obvious reason is the nourishment, sustenance, patronage and up bringing of a human child so as to make him/her a useful human being. Mother keeps a caring instinct, therefore, is the suitable person for such task. That was the reason, for custody, the term 'Hizanat' has been used. The word "Hizanat" is derived from the Arabic word "Hizan" which means 'lap of the mother', it denotes giving a child to the mother's lap for caring and rearing. (…) It signifies love, care and affection directly and constantly needed by a male child up to the age of seven years and female child till she attains puberty. Care, love and affection play a vibrant and vital role in developing the nature and character of a person and as such Hizanat can safely be termed as a tribute and privilege of a minor assigned and vested in the mother. The woman who holds the custody is called "Hizana" and she loses the right of hizanat in certain circumstances suggested in the law.

iii) In case of conflicting views expressed in text books on Muslim Law, such as Hedaya, Fatawai-i-Alamgiri, Radd-ul-Mukhtar, Muhammadan Law by Sayyed Amir Ali, etc., how are the Courts to determine which view is correct? " The answer given by the Bench is that where there is no Quranic or Traditional Text or an Ijma' on a point of law, and if there be a difference of views between A'imma and Faqihs, a Court may form its own opinion on a point of law.

iv) Hizanat is regulated through Muslim Personal Law of the parties; under the Shia Law mother is entitled to the custody of male child until he attains the age of two years and if female child until she attains the age of seven years. After the child has attained the above- mentioned age, the custody belongs to the father.

v) It has been observed under Shafei Law that the mother is entitled to the custody of her daughter even after she has attained puberty and until she is married.

vi) As per Para 352 of Muhammadan Law, a guiding book, mother is entitled to custody of male child until he has completed the age of seven years and her female child until she has attained puberty. The right continues though she is divorced by the father of the child. (…) However, if she marries a second husband, stranger to child, in which case custody belongs to the father but subject to determination by learned Guardian Court. (…) From the above discussion, it is clear that under the law mother has a preferential right for custody of a minor till the prescribed age. Even if divorce has become effective between the spouses, mother does not lose her right of hizanat except in the situations mentioned in Para 354 of Muhammadan Law subject to determination by Gurdian Court.

vii) There are certain conditions which disqualify females for custody. Para 354

of Muhammadan Law says that a female, including the mother, who is otherwise entitled to the custody of a child, loses the right of custody in the following situations; (1) if she marries a person not related to the child within the prohibited degrees (Ss. 260-261), e.g., a stranger but the right revives on the dissolution of marriage by death or divorce, or, (2) if she goes and resides, during the subsistence of the marriage, at a distance from the father's place of residence; or,(3) if she is leading an immoral life, as where she is prostitute, or (4) if she neglects to take proper care of the child.

viii) There is another way of looking at things; under section 491 of the Cr.P.C. the High Court exercises two-fold jurisdiction; firstly, to direct the production of a person who is illegally detained to be brought before the Court so as to set him at liberty and secondly, to direct the production of a person so that he be dealt in accordance with law. In the latter case, it is not essential that the detention must be by use of force; if a person has been confined in a manner not warranted by law, in that situation also the Court can issue appropriate direction under Section 491, Cr.P.C.

ix) Proceedings under Section 491 of Cr.P.C can be initiated before the Sessions Judge or Additional Sessions Judges and before this Court if any person is in illegal and improper custody; similar relief can also be sought by a party under Article 199 (1)(b)(i) of the Constitution of the Islamic Republic of Pakistan, 1973 through writ of Habeas Corpus when any person is in custody without lawful authority or in unlawful manner. This Article is usually applicable on malfeasance, misfeasance and nonfeasance of any party with respect to custody of a detenu. However, High Court Rules and Orders do not create any difference in the format of petition and style of orders in both types of petitions. Chapter 4-F, Volume-V of High Court Rules & Orders consists of rules framed by the High Court under Section 491(2) of Code of Criminal Procedure, 1898 which regulate the proceedings on petitions under Section 491 Cr.P.C. (…) Such rules further clarify that Chapter-4, Part-J of above Volume deals with rules for the issue of orders/directions under Articles 199 and 202 of the Constitution of the Islamic Republic of Pakistan, 1973 and clause 27 of the letter patent. According to Part-1 of Part-J referred above, such application shall be governed by rules 1 to 18 of Chapter 4-F, Volume-V of High Court Rules and Orders, which means rules 1-18 cited above shall also be applicable on habeas petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

x) Keeping in view the above explanation, in appropriate cases order for recovery of minor can be issued under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, which is being issued in this case accordingly.

Conclusions: i) The waiving of her right of hizanat by the mother has no binding force in the eyes of law and mother cannot be held accountable if at one occasion she had given up her right to hizanat on any condition. She will retain her right of hizanat when there is no disqualification in law of her waiver.

ii) See above analysis No. ii.

iii) Where there is no Quranic or Traditional Text or an Ijma' on a point of law, and if there be a difference of views between A'imma and Faqihs, a Court may form its own opinion on a point of law.
iv) Under the Shia Law mother is entitled to the custody of male child until he attains the age of two years and if female child until she attains the age of seven years.
v) Under Shafei Law the mother is entitled to the custody of her daughter even after she has attained puberty and until she is married.
vi) The right to retain custody of minor continues, though mother of child is divorced by the father of the child. However, if she marries a second husband, stranger to child, in which case custody belongs to the father but subject to determination by Guardian Court.
vii) See above analysis No. vii.
viii) Section 491 of the Criminal Procedure Code (Cr.P.C.) grants the High Court dual authority: first, to order the presentation of an individual unlawfully detained for release; and second, to compel the presentation of a person for lawful treatment. This provision applies not only to cases of detention by force but also to instances of confinement not justified by law, allowing the Court to issue suitable directives in such circumstances.
ix) See above analysis No. ix.
x) In appropriate cases order for recovery of minor can be issued under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

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36. **Lahore High Court**
China Harbour Engineering Company Limited, etc. v. Z Z Enterprises, etc.
Civil Revision No.54865 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC7746.pdf

Facts: This application under section 115 CPC seeks revision of order passed by the Civil Judge 1st Class whereby suit for recovery along with specific performance of contract filed by respondents No.1 & 2 was considered as commercial case.

Issues: i) Whether functioning of Commercial Courts is without any backing of law and in particular after repeal of the Punjab Commercial Courts Ordinance, 2021 the same is legally invalid?
ii) Whether there is any law relating to the speedy disposal of commercial cases?
iii) Whether rules and orders framed by the Lahore High Court are in accordance with the Constitution?
iv) What is the object of the supervision and control over the subordinate judiciary by the High Court?
v) What is the object of the designated courts for the commercial cases?

Analysis: i) The courts designated to hear cases of commercial nature are functioning in accordance with the CPC and the Rules and Orders of the Lahore High Court

under its superintendence and control within the scope of Articles 202 & 203 of the Constitution… …In order to secure expeditious disposal of cases of commercial nature, the Lahore High Court vide its notification No.6032 DDJ/DR(PD&IT) dated 28.04.2020 designated one court of Additional District & Sessions Judge, Lahore and two courts of Civil Judges to hear and dispose of the said cases with further direction to the District & Sessions Judges, Multan, Faisalabad, Gujranwala and Rawalpindi to entrust the work of commercial cases pertaining to their districts to the Judicial Officers already dealing with the Overseas Pakistanis' cases.

ii) Rule 10, Part-K, Chapter-1, Volume-I of Rules and Orders of the Lahore High Court, Lahore provides that commercial cases should be disposed of as speedily as practicable, which are to include cases arising out of ordinary transactions of merchants, bankers and traders.

iii) Rules and Orders have been framed by the Lahore High Court in accordance with Article 202 of the Constitution that empowers it to do so subject to the Constitution.

iv) Article 203 of the Constitution envisages that each High Court shall supervise and control all courts subordinate to it with the object to establish orderly, honorable, upright, impartial and legally correct administration of justice. The supervision and control over the subordinate judiciary vested in the High Courts under Article 203 of the Constitution is exclusive in nature, comprehensive in extent and effective in operation.

v) The courts of ordinary civil jurisdiction have been designated to hear and dispose of the commercial cases that are dealing with the same in accordance with the procedure provided under the Code of Civil Procedure, 1908 with the sole object to ensure expeditious disposal of the same on priority basis. Thus, for all practicable purposes all courts designated as Commercial Courts under the notification dated 28.04.2020 are essentially Civil Courts exercising jurisdiction under the Code of Civil Procedure, 1908 for expeditious disposal of civil disputes. By considering a case as commercial one, the right of fair trial available to the opposite party is not being compromised since no special procedure has been laid down to dispose of the same.

Conclusion: i) The courts designated to hear cases of commercial nature are functioning in accordance with the CPC and the Rules and Orders of the Lahore High Court under its superintendence and control within the scope of Articles 202 & 203 of the Constitution.

ii) Rule 10, Part-K, Chapter-1, Volume-I of Rules and Orders of the Lahore High Court, Lahore provides that commercial cases should be disposed of as speedily as practicable.

iii) Rules and Orders have been framed by the Lahore High Court in accordance with Article 202 of the Constitution that empowers it to do so subject to the Constitution.

iv) The object of the supervision and control over the subordinate judiciary by the High Court is to establish orderly, honorable, upright, impartial and legally correct administration of justice.

v) The courts of ordinary civil jurisdiction have been designated to hear and dispose of the commercial cases that are dealing with the same in accordance with the procedure provided under the Code of Civil Procedure, 1908 with the sole object to ensure expeditious disposal of the same on priority basis.

LATEST LEGISLATION / AMENDMENTS

1. Vide Notification No.44 of 2024, dated 25.04.2024, Statement of conditions for transfer of state/Nazul land earlier allotted to Lahore knowledge Park Company, in favour of Punjab Central Business District Development Authority have been issued.
2. Vide Notification No.45 of 2024, dated 25.04.2024, amendments have been made in Para 1.18 of Punjab Law Department Manual.
3. Vide Notification No.46 of 2024 dated 29.04.2024, amendment has been made in Schedule at Serial No. 33a of Punjab Population Welfare Department Service Rules, 2009.
4. Vide Notification No. PAP/Legis-3(02)/2024/41, dated 30.04.2024, amendments have been made in sections 2, 10, and 12 of the Provincial Assembly of the Punjab Privileges Act, 1972 and in sections 2, 3, and 4 of the Provincial Assembly of the Punjab Secretariat Services Act, 2019.

SELECTED ARTICLES

1. MANUPATRA

https://articles.manupatra.com/article-details/Dissolution-of-Marriage-in-Islam-Balancing-Sacred-and-Secular-Perspectives

Dissolution of Marriage in Islam: Balancing Sacred and Secular Perspectives by Kanishka Rathore

Marriage in India is governed by various personal laws. One of these laws is the Hindu Marriage Act of 1955 which considers marriage a religious sacrament. On the other hand, under Muslim law, marriage is considered a contractual relationship that contains all the essential elements of a contract. The primary purpose of marriage in Islamic law is to legalize sexual intercourse and procreation. If a marital dispute arises, divorce ends the relationship. Under Muslim law, there are two modes of dissolution: divorce and talaq. However, the Supreme Court has declared triple talaq, which allowed husbands to divorce their wives by simply uttering the word "talaq" three times, an illegal practice.

2. MANUPATRA

https://articles.manupatra.com/article-details/Intellectual-Property-Rights-in-Sports-Broadcasting

Intellectual Property Rights in Sports Broadcasting by Rohit Bansal

Sports Broadcasting has emerged as a new trend among the businessmen worldwide. This industry has emerged as a multi-billion-dollar industry. At present Broadcasting is one of the best income generating sources for the Broadcasters as well as Sports Organizations. Doing Broadcasting is not a very simple task, it comes with multifaceted challenges for the broadcasters. Broadcasting is concerned with Intellectual Property Rights issues which includes patents, copyright, trademark, Design etc. This research work shows a comprehensive analysis of Intellectual Property rights in Sports Broadcasting. It deals with legal complexity, economic significance, historical development etc. This study explores the complexities of balancing the interests of broadcasters, sports organizations, athletes and consumers while addressing technological advances in this domain.

3. **MANUPATRA**
https://articles.manupatra.com/article-details/ADVOCATING-FOR-ALTERNATIVE-DISPUTE-RESOLUTION-IN-INTELLECTUAL-PROPERTY-RIGHTS-NEED-OF-THE-HOUR

Advocating for Alternative Dispute Resolution in Intellectual Property Rights: Need of The Hour by Vanshika Dabriwal

This paper discusses the importance of Alternative Dispute Resolution (ADR) in Intellectual Property Rights (IPR) disputes in India. It highlights the evolving nature of IPR issues and the need for efficient conflict resolution methods. The paper explores how ADR, including mediation, arbitration, and injunctions, can be utilised to resolve IP disputes effectively and quickly. It emphasises the benefits of ADR in protecting sensitive information, saving time and money, and providing targeted solutions. The paper also examines the remedies available in ADR for IP disputes and advocates for the integration of ADR in the realm of intellectual property for efficient conflict resolution.

4. **MANUPATRA**
https://articles.manupatra.com/article-details/Liquidated-Damages-Limitation-Arbitration-Examining-Their-Interplay-In-Contractual-Disputes

Liquidated Damages, Limitation & Arbitration: Examining Their Interplay in Contractual Disputes by Sanjay Dewan

Liquidated Damages are a contractual provision that specifies a pre-determined amount to be paid by one party to another in the event of a breach of contract in the nature of compensation, for the harm or loss incurred due to the breach. The fundamental principle behind the concept of liquidated damages is that parties to a contract agree to payment of a certain sum on the breach of contract in the nature of genuine pre-estimated/determined damages. Thus, when such stipulations are made in a contract, they are known as liquidated damages.

5. **MANUPATRA**
https://articles.manupatra.com/article-details/Cyber-Bullying-A-Surge

Cyber Bullying - A Surge by Zapan Chawla

Cyber bullying is a technology that leads to variants of digital and online abuse. The source of technology can be cell phones, computer, consoles that contains access to internet causing harassment, stalking, doxing, defamation, or attacking someone's reputation.

Though this online abuse is not only restricted to the aforementioned acts but is also troublesome within prevailing online gaming community.

Victims or sufferers of cyberbullying are seldom aware about the identity behind these bullying acts. Perhaps, suspicion formed by victim rarely makes them create a staunch belief over who actually the bully is because acts like trolling and using personal information has become way too mundane in the contemporary scenario.

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-05-2024 to 31-05-2024)

A Summary of Latest Judgments Delivered by the Supreme Court of Pakistan & Lahore High Court, Legislation/Amendment in Legislation and important Articles

Prepared & Published by the Research Centre Lahore High Court

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
The State through A.N.F., Rawalpindi v. Obaid Khan (decd) through LRs & others
Civil Appeal No.277 of 2014
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._277_2014.pdf

Facts: This Appeal is before the Supreme Court to address a novel legal question: whether the Anti-Narcotic Force (ANF) qualifies as a "person aggrieved" under Section 43 of the Prevention of Smuggling Act, 1977, and thus can file an Appeal. This question arose after the Special Appellate Court and the Peshawar High Court dismissed the State's Appeal, adhering to the precedent that restricted the right of appeal to individuals, excluding the State. The Supreme Court's examination is crucial due to the significant implications for the enforcement of anti-smuggling laws and the ANF's role in combating smuggling activities.

Issue: Whether the Anti-Narcotic Force (ANF) qualifies as a "person aggrieved" under Section 43 of the Prevention of Smuggling Act, 1977, and thus can file an appeal?

Analysis: Given the facts, the question at hand appears to depend entirely on the true construction of section 43 of the Act. Before we go any further, it is important to remember one general principle: the right of appeal is a creation of a statute, and no such right can be implied. We now proceed to consider the language of section 43 of the Act. This section enacts that "any person aggrieved by an order of the Special Judge passed under section 31, section 32 or section 34 may, within thirty days from the date of such order, prefer an appeal before the Special Appellate Court whose decision thereon shall be final." The words "person aggrieved" seems to be the governing words, and show that the object of the legislature is to give an appeal where the legal right of the person is infringed and he has suffered a legal wrong or injury, in the sense that his interest, recognised by law, has been prejudicially and directly affected by order of the Special Judge passed under section 31, 32 or 34 of the Act. To perfect the understanding of this point, we deem it appropirate to quote here the remarks made by James L. J. in Re Sidebotham. He said, 'the words "person aggrieved" do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A "person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something.' However, in the present case, it is said that the Anti Narcotic Force, being the complainant, was "aggrieved" as it had informed the Special Judge that the properties were acquired by smuggling, which was erroneously found not true by the Special Judge. We are not disposed to accept that. A plain reading of the Act's scheme, particularly section 31, clarifies that the Special Judge may receive information (complaint) from 'any person'. In this case, as discussed above, the informer was the Anti-Narcotic Force. After the information was conveyed to the

Special Judge, the informer had no further role, as there was no statutory duty for the informer to appear before the Special Judge nor to produce evidence supporting the information. The informer was also not required to file a written statement in response to the accused's position, and the Special Judge was not required to adjudicate between the accused and the informer. Quite the contrary, after receiving the information, the matter entirely had become one between the Special Judge and the accused. This is so because, under Section 33 of the Act, the accused bears the burden of proving that any property specified in a notice under Section 31 is not acquired through smuggling. It appears that it was for this reason the Anti-Narcotic Force, apart from the information presented to the Special Judge, did not adduce any oral or documentary evidence. At that, its no legal right was infringed, and it had suffered no legal wrong or injury. In the circumstances, the Anti-Narcotic Force, which could not succeed in getting a forfeiture order against all the properties of the accused, could be said, to be annoyed by the findings of the Special Judge. It could also feel that what was considered a breach of law was wrongly held to be not a breach of law by the Special Judge. Despite all this, the Anti Narcotic Force could not be described as a person aggrieved rather as a person annoyed at best, and so, was not entitled to prefer an appeal against the Special Judge's order under section 43 of the Act. As a result, its appeal was rightly held to be not maintainable. We accordingly dismiss this appeal.

Conclusion: The Anti-Narcotic Force (ANF) does not qualify as a "person aggrieved" under Section 43 of the Prevention of Smuggling Act, 1977, and thus cannot file an appeal. The ANF, as the informer, had no further role after providing information to the Special Judge, and its legal rights were not infringed nor did it suffer any legal wrong or injury.

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2. **Supreme Court of Pakistan**
Government of Pakistan through Secretary, Ministry of Defence Rawalpindi Military Estates Officer, Hazara Circle, Abbottabad & another v. Mst. Ayesha Bibi widow and others.
Civil Appeals No. 1980/2023 to 2012/2023
Mr. Justice Yahya Afridi, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah.
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1980_2023.pdf

Facts: The Government of Pakistan, through the Secretary of the Ministry of Defence, has filed these appeals to challenge the judgment passed by the Peshawar High Court, Peshawar, whereby the appeals of the appellant against the determination of compensation for the acquisition of land of the private landowners by the Referee Court were dismissed.

Issues: i) Whether the Court can enhance the rate of compensation beyond the amount claimed by the respondents in the reference applications?
ii) What are the several factors that are to be considered, while determining the amount of compensation to be paid to the landowners for the acquisition of their

land?

Analysis: The judicial consensus is that the compensation to be awarded by the Referee Court to the owners of the acquired property should not exceed the amount so sought by them, provided the conditions precedent provided under Sections 9 and 25 of the Act are complied with. On a general plane, it is but fundamental that, in the matter of compensation for acquisition of land, it is the fair market value of the land which is due and payable to the landowner. The Referee Court, while hearing a reference application, exercises a special jurisdiction to ensure that landowners are compensated with the true market value of their land on the basis of evidence produced on record. In reference application, the claim for fair compensation for acquisition of land is made by the landowners against the State. In this regard, one must not forget that the State wields unilateral power under the Act, to deprive landowners of their property rights guaranteed under Article 24 of the Constitution. Therefore, fairness demands that the interests of those affected by eminent domain remain central to the Referee Court, while determining compensation. The State is bound to pay fair compensation to the landowners on the basis of the market value of the land acquired, and to deny this benefit to the landowners would be tantamount to permitting the State to acquire the land of the landowners on payment of less than the fair market value. Hence, it will not be unjust to hold that the Referee Court, while determining the rate of compensation has to consider: firstly, that the provisions of the Act, and in particular, those that provide the landowners to assert their objections to the acquisition of their property and the fair value thereof have been strictly followed; and in cases, where there is a failure of strict compliance of the said provisions of the Act, and in particular Sections 9 and 25 (supra), then the Referee Court may proceed to adjudge the compensation for the acquired property beyond the amount claimed by the landowners in the reference applications, if the evidence produced by the parties justify such enhancement in accordance with Section 23 of the Act, as was the case in the present appeals. Thus, we find that the objection to the awarded compensation raised by the learned Attorney General, exceeding the amount claimed by the respondents /landowners in the reference applications, does not hold legal merit.

ii) The main thrust of the learned Additional Attorney General questioning the quantum of compensation awarded to the respondents for the acquisition was that the Courts failed to reflect the true market value of the acquired property, and that the Collector had correctly assessed the true market value of the acquired property in his award. When we review the award determined by the Collector, we note that the same not only acknowledged the high value of the land, but also recorded that the land under acquisition could serve both residential and agricultural purposes. And yet, the sole reliance of the Collector on a one-year average price to determine the amount of compensation overlooks the distinctive attributes and future potential of the acquired property. While the one -year average price may be a factor in determining the market value of the land, it cannot be the sole determinant. In assessing compensation, the Collector must consider not only the current market

value of the land but also its potential value. The market value is to be taken up as one existing on the date of taking possession of the land 2, while the potential value is the value to which similar lands could be put to any use in future. Thus, in determining the quantum of compensation, the exercise may not be restricted to the time of taking possession of the land, but its future value shall also be taken into account. (…) Several factors are to be considered, while determining the amount of compensation to be paid to the landowners for the acquisition of their land: the value of similar land nearby is considered; additionally, any increases in land value during the acquisition process may be factored in; and most importantly, the future utility of the acquired land, keeping in view the availability of facilities for its said utilization, are considered to assess its potential value. It is important to note that there is no single formula for the determination of the compensation due to the landowners for the compulsory acquisition of their land. Instead, different factors relevant to each situation are used together to determine the market value as defined in Section 23(1) of the Act.3 Courts are increasingly recognizing the potential for future development when determining fair compensation for acquired land, reflecting a more holistic approach.

Conclusions: i) The compensation to be awarded by the Referee Court to the owners of the acquired property should not exceed the amount so sought by them, provided the conditions precedent provided under Sections 9 and 25 of the Land Acquisition Act, 1894 are complied with and in cases, where there is a failure of strict compliance of the said provisions, then the Referee Court may proceed to adjudge the compensation for the acquired property beyond the amount claimed by the landowners in the reference applications, if the evidence produced by the parties justify such enhancement in accordance with Section 23 of the Land Acquisition Act, 1894.

ii) Several factors are to be considered, while determining the amount of compensation to be paid to the landowners for the acquisition of their land: the value of similar land nearby is considered; additionally, any increases in land value during the acquisition process may be factored in; and most importantly, the future utility of the acquired land, keeping in view the availability of facilities for its said utilization, are considered to assess its potential value.

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3. **Supreme Court of Pakistan**
M/ s Taj Wood Board Mills (Pvt) Limited, etc. v. Government of Pakistan
Civil Petition s No. 1896, 1897 & 1900 of 2022
Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1896_2022.pdf

Facts: The petitioners along with other business concerns from the Merged Districts of erstwhile Federally Administered Tribal Areas and Provincially Administered Tribal Areas moved the constitutional jurisdiction of the Peshawar High Court, assailing certain terms of CGO No. 1 of 2021 and Circular No. 9 of 2021 and also alleged and challenged the discriminatory treatment meted out to the petitioners

under the provisions of CGO No. 8 of 2021. The Peshawar High Court decided all the petitions vide a consolidated judgment. The petitioners, through the instant petitions challenged the judgment, passed by the Peshawar High Court.

Issue: Whether through a circular specific industry can be exempted from the benefits intended for all businesses?

Analysis: We see that the exemption under consideration was provided with a purpose, namely, to provide a breather to the former tribal areas before full application of fiscal laws was extended to such areas. This benefit was extended to a specific geographical area, with eligibility based solely on the location of individuals and businesses in that area. A distinction was drawn between the former tribal areas and the rest of the county. This classification was based on the consideration that a phased approach was to be adopted for the extension of fiscal laws to the erstwhile tribal areas. For attaining this objective, it is not clear why the legislature excluded two industries i.e. steel and ghee or cooking oil from the exemption. All persons and industries of the former tribal areas which formed a particular class by reason of being located in the former tribal areas were to reap the benefit of this concession. The issue is not of granting or not granting the exemption. Once the legislature exercises the choice of extending a concessional right to the people and businesses of an area for the reason of being located in that area, excluding some merely because they are engaged in two specific industries would not provide rational basis for their exclusion (…) There does not remain any room for creating sub-classification thereby excluding one sub -category without adopting any differentia having a rational relation to the object of exemption. The record does not exhibit any rational distinction on the basis of which two industries of steel and ghee or cooking oil were deprived of the benefit of exemption envisaged under Entry 152 of the Sixth Schedule to the Sales Tax Act. There cannot be any discriminatory treatment of some persons who fall in the same category for it would then be violating the equality clause enshrined in Article 25 of the Constitution. The Exclusion of steel and ghee or cooking oil industries has no nexus with the object that is sought to be achieved i.e. providing a time specific relief to the people and industry of the former tribal areas. It appears to be a case of clear and palpable discrimination without any rational basis. We do not agree with the view of the High Court with regard to the steel and ghee or cooking oil industries and declare that the exclusion of steel and ghee or cooking oil industries in Entry 152 of the Sixth Schedule to the Sales Tax Act is ultra vires Articles 25 and 18 of the Constitution and is, therefore, struck down." (…) Comparing the facts of the above case with that of the present case, it becomes clear that the petitioners in both the cases share striking similarities. First, they are business concerns located in the Merged Districts. Second, they both rely upon the same exemption extended to the people and businesses of the region. Finally, they claim to be victims of discrimination simply because they operate in a specific industry. However, the key distinction between the two cases lies in the nature of the challenged provision. In the earlier case, it was a provision of a legislative enactment, and in the present

case, it is a discriminatory provision introduced in a circular, denying the beneficial mode of clearance and transhipment granted to bulk - importing edible oil manufacturers. (…) We see that a four -Member Bench of this Court in M/ s. AK Tariq Foundry case (supra) has already adjudged a statutory provision, creating a sub -class within those carrying on businesses in the Merged Districts, and thereby executing a category of businesses being refused exemption from the fiscal and tax regime as enjoyed by other businesses in the Merged Districts, as discriminatory, offending Article 25 of the Constitution. This pronouncement of this Court leaves little room for this three-Member Bench to hold otherwise.

Conclusion: A circular exempting specific industry from the benefits intended for all businesses, is unconstitutional, violating the principles of equality and non-discrimination enshrined in Article 25 of the Constitution.

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4. **Supreme Court of Pakistan**
Nawab Jangaiz Khan Marri v. Mir Naseebullah Khan and others
Civil Appeal No.292/2024
Mr. Justice Amin-ud-Din Khan, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._292_2024.pdf

Facts: This Civil Appeal has been brought under Sub-section (5) of Section 9 of the Elections Act, 2017 to challenge the Order passed by the Election Commission of Pakistan. The appellant and the respondents No.1, 4, and 32 contested the general elections to the Provincial Assembly seat. The present controversy merely revolves around the impugned order whereby re-polling was ordered by the ECP on 4 polling stations.

Issues: i) Whether section 9 of the Elections Act 2017 shall preponderate regardless of anything to the contrary to such provision and in the event of any inconsistency flanked by the non-obstante clause and another provision, the non-obstante clause shall prevail over the other clause and clauses?
ii) Can the Election Commission of Pakistan call upon the voters in the concerned polling station or stations or in the whole constituency to recast their votes in the manner provided for bye-elections?
iii) Is the Election Commission of Pakistan deemed to be an Election Tribunal while exercising powers under section 9 of the Elections Act 2017?
iv) Is the Election Commission of Pakistan vested with powers to regulate its own procedure while exercising powers under section 9 of the Elections Act 2017?
v) Whether the powers under section 9 of the Elections Act 2017 are summary in nature?
vi) What is the true meaning and import of the expression ‘satisfied’?

Analysis: i) The construal and analysis of Section 9 of the Act shows that it starts off with a non-obstante clause commonly marshaled in a provision to advocate that such provision shall preponderate regardless of anything to the contrary to such

provision and in the event of any inconsistency flanked by the non-obstante clause and another provision, the non-obstante clause shall prevail and dominate over the other clause or clauses.

ii) If the ECP, from the facts apparent on the face of the record and after such enquiry as it may deem necessary, is satisfied that by reason of grave illegalities or such violations of the provisions of this Act or the Rules as have materially affected the result of the poll at one or more polling stations or in the whole constituency, it can call upon the voters in the concerned polling station or stations or in the whole constituency as the case may be, to recast their votes in the manner provided for bye-elections, and notwithstanding the publication of the name of a returned candidate, under Section 98 of the Act, the ECP may exercise the powers conferred on it by sub-section (1) before the expiration of sixty days after such publication; and, where the ECP does not finally dispose of a case within the said period, the election of the returned candidate shall be deemed to have become final, subject to the decision of an Election Tribunal on an election petition, if any.

iii) While exercising powers under Section 9 of the Act, the ECP is deemed to be an Election Tribunal to which an election petition has been presented and shall regulate its own procedure. A right to file direct appeal within thirty days in this Court is provided to an aggrieved person against the declaration of ECP.

iv) Sections 139 to 166 [Chapter IX] of the Act are ordained to deal and decide the "Election Disputes", yet again with a non-obstante clause, powers are vested in ECP to regulate its own procedure while exercising powers under Section 9 of the Act which has been given an overriding effect only to certain limits and restrictions including the timeline of decision prescribed to dispose of the case i.e., if the application/complaint is not finally disposed of within sixty days from the date of publication, the election of the returned candidate shall be deemed to have become final, subject to the decision of an Election Tribunal on an election petition.

v) The powers under Section 9 of the Act are summary in nature wherein ECP is permitted under the law to regulate its own procedure and against such order, direct appeal is provided in this Court. The powers vested in the ECP by virtue of the aforesaid section are not such that the ECP should conduct a full-fledged trial; but before passing any order under Section 9 of the Act, by regulating its own procedure, the ECP should satisfy itself whether in the facts and circumstances of the case, any interference is required and whether the cognizance can be taken within the parameters and jurisdiction assigned to the ECP under Section 9 of the Act.

vi) The connotation and import forming the constituents of the word "satisfied" has been used in various laws and interpreted and deciphered in a number of judgments of our own as well as foreign jurisdiction. The true meaning and import of this expression deduces existence of reasonable grounds; discretionary decision is to be made according to rational reasons; existence of mental persuasion much higher than mere opinion; free from anxiety, doubt, perplexity, suspense or uncertainty and convince beyond a reasonable doubt.

Conclusion: i) Section 9 of the Elections Act 2017 shall preponderate regardless of anything to the contrary to such provision and in the event of any inconsistency flanked by the non-obstante clause and another provision, the non-obstante clause shall prevail over the other clause and clauses.

ii) The Election Commission of Pakistan can call upon the voters in the concerned polling station or stations or in the whole constituency to recast their votes in the manner provided for bye-elections, If the ECP, from the facts apparent on the face of the record and after such enquiry as it may deem necessary, is satisfied that by reason of grave illegalities or such violations of the provisions of this Act or the Rules as have materially affected the result of the poll at one or more polling stations or in the whole constituency.

iii) The Election Commission of Pakistan is deemed to be an Election Tribunal while exercising powers under section 9 of the Elections Act 2017.

iv) The Election Commission of Pakistan is vested with powers to regulate its own procedure while exercising powers under section 9 of the Elections Act 2017.

v) The powers under section 9 of the Elections Act 2017 are summary in nature wherein ECP is permitted under the law to regulate its own procedure and against such order, direct appeal is provided in this Court.

vi) See above analysis No.vi.

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5. **Supreme Court of Pakistan**
Abdul Hameed v. The State and another
Crl.P. No. 194/2024
Khawaja Saeed Ahmed v. The State and another
Crl.P. No. 29-K/2024
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._194_2024.pdf

Facts: Petitioners along with surety of accused were awarded conviction and sentence by learned Special Judge, Anti-Corruption u/s 409 r/w section 34 PPC and u/s 5(2) Prevention of Corruption Act, 1947. Both the petitioners and convict surety challenged their conviction and sentence by filing three separate appeals before High Court. While accepting appeal of convict surety and acquitting him of the charge vide common judgment the conviction and sentence awarded to both the petitioners was maintained by the Appellate Court against which both the petitioners petitioned for leave to appeal.

Issue: Whether the case of criminal breach of trust u/s 409 r/w section 34 PPC and offence u/s 5(2) Prevention of Corruption Act, 1947 is made out if mens rea, receiving of illegal consideration and dishonest misappropriation of property are not proved?

Analysis: If record does not reveal any mens rea nor it reveals any illegal consideration having been received or that the property had been misappropriated or the same had been converted to the personal use of the accused, no case for criminal breach of trust punishable u/s 409/34 PPC r/w section 5(2) Act-II of 1947 is made out.

Conclusion: Case of criminal breach of trust u/s 409 r/w section 34 PPC and u/s offence u/s 5(2) Prevention of Corruption Act, 1947 is not made out if mens rea, receiving of illegal consideration and dishonest misappropriation of property or conversion to personal use of the same are not proved.

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6. **Supreme Court of Pakistan**
Abdullah Channah v. The Administrative Committee and others
Civil Petition No.653-K of 2022
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._653_k_2022.pdf

Facts: The Sindh High Court advertised the post of the first batch of Judicial Magistrates in Sindh and the name of the petitioner was at serial number 6 in recommended names, whereas the list of the respondent No. 2 to 60 was issued on the same date and they were shown junior to the petitioner. Afterwards, the petitioner was promoted to the rank of Senior Civil Judge but his existing seniority was not followed, therefore, he filed representation before Administration Committee in which it was resolved that the incumbent of the posts of Judicial Magistrates and Civil Judges (Respondents 2 to 69) shall be considered as combined cadre for reckoning their seniority on the basis of their date of appointment. Eventually, the petitioner filed his Service Appeal, which remained pending for about 19 years. However, vide impugned order, the appeal was dismissed by the Tribunal for not being maintainable and for non-prosecution, hence this Civil Petition for leave to appeal.

Issues: i) Which Forum has the jurisdiction to decide the cases of members of the subordinate judiciary relating to the terms and conditions of their service?
ii) What is the remedy provided under the law to challenge the adverse departmental or disciplinary actions in respect of the terms and conditions of the service of members of the subordinate judiciary?
iii) How the legal maxim "*actus curiae neminem gravabit*" is interrelated with the state of affairs where the Court is under an obligation to reverse the wrong done to a party by the act of Court?

Analysis: i) Under Section 3-B of the Sindh Service Tribunals Act, 1973, the Chief Justice of the High Court is empowered to constitute the Service Tribunal relating to the terms and conditions of service of the members of the subordinate judiciary including the disciplinary matters and being aggrieved, they can file the appeal before the Sindh Subordinate Judiciary Service Tribunal under Section 4 of the Act ibid. While Section 5 of the Act ibid elucidates the powers of the Tribunal which may, on appeal, confirm, set-aside, vary or modify the order appealed against, and for the purpose of deciding any appeal, be deemed to be a Civil Court and shall have the same powers as are vested in such Court under the Code of Civil Procedure, 1908.

ii) Indubitably, when any issue is cropped up in respect of the terms and conditions of the service of members of the subordinate judiciary including the grievance against the dismissal from service, compulsory retirement, wrong fixation of seniority, or grievance against any minor or major penalty, then the recourse is to be made through the Tribunal and they are not supposed to file civil suit in the Civil Court or the Writ Petition in the High Court to challenge the adverse departmental or disciplinary actions against them and if they are non-suited on the ground of maintainability, then their grievances or injustice will become irremediable and irreversible.

iii) An error or oversight in any order or decision may be reviewed sanguine to the renowned legal maxim "*actus curiae neminem gravabit*", which is a well-settled enunciation and articulation of law, expressing that no man should suffer because of the fault of the Court or an act of the Court shall prejudice no one, and this principle also denotes the extensive pathway for the safe administration of justice.

Conclusion: i) The Tribunal constituted under Section 3-B of the Sindh Service Tribunals Act, 1973 has exclusive jurisdiction to decide all the issues relating to the terms and conditions of service of members of the subordinate judiciary.

ii) The only recourse is to be made through the Tribunal to challenge the adverse departmental or disciplinary actions in respect of the terms and conditions of the service of members of the subordinate judiciary.

iii) The legal maxim "*actus curiae neminem gravabit*", is an elementary doctrine and tenet to the system of administration of justice beyond doubt that no person should suffer because of a delay in procedure or the fault of the Court.

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7. **Supreme Court of Pakistan**
Abrar Ahmad Farooq, etc. v. The State, etc.
Criminal Appeals no.443, 444 and 445 of 2019
Mr. Justice Syed Hasan Azhar Rizvi, Miss. Justice Musarrat Hilali,
Mr. Justice Naeem Akhtar Afghan.
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._443_2019.pdf

Facts: The appellants were tried and convicted by the Special Court Anti-Terrorism and were awarded death sentences under section 7(a) of Anti Terrorims Act, 1997 and under section 302(b) of PPC, one appellant under section 21-L of Anti-Terrorism Act, 1997 for committing murders in the court premises. Their appeals were dismissed by the High Court with some alteration to the extent of one appellant. Now, they have assailed the judgments of below fora.

Issues: i) Whether police officials are as good witnesses as any other private witness?

ii) Whether an offence of firing in court premises is triable by the Anti-Terrorism Court?

iii) How the quantum of sentence is determined by the court?

iv) Whether the motive of accused to take revenge the murder of his father/brother is a mitigating circumstance?

Analysis: i) The police officials are as good witnesses as any other private witness. In absence of any animus, their testimony can be relied upon if they remained un-shattered during cross-examination.

ii) The offence of firing or use of explosives by any device, including bomb blast in the court premises has been specified in entry No.4 (iii) of the third schedule to ATA as a 'scheduled offence'. In absence of any motive or design to create fear or terror or insecurity as mentioned in clauses (b) or (c) of sub-section (1) of section 6 ATA, the cases of scheduled offences specified in entry No.4 of the third schedule to ATA, being heinous offences, are to be tried by an Anti-Terrorism Court for speedy trial and in such cases, Anti-Terrorism Court can award punishment for the said offence and not for committing the offence of terrorism. Section 6 read with section 7 of ATA, 1997 would not be attracted if the murder is committed to avenge private enmity. The 3rd Schedule to ATA, 1997 provides list of scheduled offences that are triable by the special court to the exclusion of any other court. By an amendment in 2005 the Anti-Terrorism Courts were conferred jurisdiction to try an accused for firing or for the use of explosives by any device including bomb blast in the court premises. The inclusion in the scheduled offences only extended the jurisdiction upon the Anti-Terrorism court to try such an accused. However, in order to convict him under section 7 of the ATA, 1997 his act must fall within the scope of section 6 of the Act.

iii) For determining the quantum of sentence, each case has to be judged upon its own facts and circumstances. A single mitigating circumstance, available in a particular case, would be sufficient to put a Judge on guard for not awarding the penalty of death but imprisonment for life.

iv) In number of cases, the motive of accused for revenge of murder of father and brother has been considered as a mitigating circumstance to reduce death penalty to imprisonment for life.

Conclusion: i) The police officials are as good witnesses as any other private witness

ii) The offence of firing in court premises to be tried by Anti-Terrorism Court for speedy trial and in such cases, Anti-Terrorism Court can award punishment for the said offence and not for committing the offence of terrorism.

iii) For determining the quantum of sentence, each case has to be judged upon its own facts and circumstances.

iv) Yes, in number of cases, the motive of accused has been considered as a mitigating circumstance to reduce death penalty to imprisonment for life.

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8. **Lahore High Court**
Haq Nawaz v. The State
Criminal Appeal No.29448-J of 2022
Mr. Justice Malik Shahzad Ahmad Khan, HCJ
https://sys.lhc.gov.pk/appjudgments/2024LHC2606.pdf

Facts: Appellant and co-accused persons (since acquitted) were tried in case F.I.R., registered in respect of offenses under sections 302/34 PPC, and vide impugned judgment, given by Additional Sessions Judge, he was convicted and sentenced.

Issues: i) Whether the conflict in the ocular account and the medical evidence of the prosecution to the extent of role attributed to an accused of making a fire shot is fatal to the prosecution case?
ii) What would be the status of statement of deceased if the same was recorded neither in presence of any member of hospital staff nor it was got verified by any official of the hospital?
iii) Is the recovery of pistol at the pointing out of the accused is of any avail to the prosecution if the empties recovered from the spot do not match with such pistol?

Analysis: i) It is further noteworthy that in the contents of the FIR and in the complaint, it was alleged that appellant, made a fire shot with his pistol after putting the same on his right thigh but doctor, who first medically examined deceased in injured condition, did not note any blackening, burning or tattooing on injury No.2, which was on the right thigh of the deceased. He further conceded that in case of a contact fire shot, there is possibility of blackening, burning and tattooing. He also added that as there was no blackening, burning or tattooing on the injuries of the deceased, therefore, the said injuries were not contact wounds and the said injuries were caused from the range of more than three feet…. I am, therefore, of the view that there is conflict in the ocular account and the medical evidence of the prosecution to the extent of role attributed to appellant, of making a fire shot on the right thigh of the deceased by putting his pistol on his right thigh.
ii) Neither any member of the concerned hospital staff was associated at the time of recording of statement of the deceased nor it was got verified by any official of the hospital that the statement was actually made by the deceased. Under the circumstances, the status of abovementioned statement of the deceased was a statement under section 161 Cr.P.C and not the dying declaration of the deceased. If the abovementioned statement is considered to be statement of the deceased under section 161 Cr.P.C, then the said statement without the test of cross examination is not worthy of reliance.
iii) Insofar as the recovery of pistol, at the pointing out of appellant, is concerned, I have noted that the report of PFSA is only regarding mechanical operating condition of the abovementioned pistol and the empties recovered from the spot did not match with the said pistol, therefore, I am of the view that the recovery of pistol at the pointing out of the appellant is of no avail to the prosecution.

Conclusion: i) The conflict in the ocular account and the medical evidence of the prosecution to the extent of role attributed to an accused of making a fire shot is fatal to the prosecution case.
ii) The statement of deceased if the same was recorded neither in presence of any member of hospital staff nor it was got verified by any official of the hospital is considered a statement u/s 161 of Cr.P.C.

iii) The recovery of pistol at the pointing out of the accused is of no avail to the prosecution if the empties recovered from the spot do not match with such pistol.

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9. **Lahore High Court**
Khizer Hayat v. The State etc
Criminal Appeal no.57920 of 2019
Mushtaq Ahmed v. Khizer Hayat etc.
Criminal Revision no.50268 of 2019
Mr. Justice Malik Shahzad Ahmad Khan
https://sys.lhc.gov.pk/appjudgments/2024LHC2590.pdf

Facts: The appellant along with co-accused (co-convict since absconded), was tried in a private complaint under sections 302/449/148/149 PPC, in connection with case F.I.R. After conclusion of the trial, the Trial Court convicted and sentenced the appellant. The appellant filed Criminal Appeal against conviction and sentence whereas complainant filed Criminal Revision for enhancement of sentence awarded to appellant/respondent no. 01.

Issues: i) Whether findings of the Investigating Officer qua the innocence of an accused can also be considered for the acquittal of the accused?
ii) What is effect if chance witnesses are unable to prove the reason of their presence at the spot at the time of incident?
iii) What is status of medical evidence?
iv) Whether a single circumstance which creates doubt regarding the prosecution case is sufficient to give benefit of doubt to the accused?

Analysis: i) If otherwise, there is some doubt in the prosecution case then the findings of the Investigating Officer qua the innocence of an accused can also be considered for the acquittal of the accused provided the said finding is based on some tangible evidence or reasoning.
ii) If the prosecution eye-witnesses are chance witnesses and they cannot prove the reason of their presence at the spot at the time of occurrence, then their very presence at the spot at the relevant time becomes doubtful.
iii) Insofar as the medical evidence of the prosecution is concerned, it is by now well settled that medical evidence is a type of supporting evidence, which may confirm the ocular account with regard to receipt of injury, nature of the injury, kind of weapon used in the occurrence but it would not identify the assailant.
iv) It is by now well settled that if there is a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused, whereas, the instant case is replete with number of circumstances which have created serious doubts about the truthfulness of the prosecution story.

Conclusion: i) The findings of the Investigating Officer qua the innocence of an accused can also be considered for the acquittal of the accused provided the said finding is based on some tangible evidence or reasoning.
ii) See above analysis No. ii.

iii) It is by now well settled that medical evidence is a type of supporting evidence, which may confirm the ocular account with regard to receipt of injury, nature of the injury, kind of weapon used in the occurrence but it would not identify the assailant.
iv) A single circumstance which creates doubt regarding the prosecution case is sufficient to give benefit of doubt to the accused.

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10. **Lahore High Court**
Mst. Khair-Un-Nisa, etc. v. Chairman, Federal Land Commission, etc.
Writ Petition No.4323 of 2000
Mr. Justice Shahid Bilal Hassan, Mr.Justice Masud Abid Naqvi
https://sys.lhc.gov.pk/appjudgments/2024LHC2215.pdf

Facts: The petitioner filed an application before High Court in a writ petition seeking amendment in the petition under Order VI, Rule 17 read with Order I, Rule 10(4) of the Code of Civil Procedure 1908.

Issues: i) When a plaintiff can take a new plea in the alternative for seeking amendment in the plaint?
ii) Whether an alternative case and an inconsistent case are synonymous?
iii) Whether the two facts can be said to be inconsistent?
iv) Whether a mere delay in filing of an application for amendment of pleadings is a good ground for its refusal?
v) Whether allowing or refusal to allow an application for amendment of pleadings hits the root of attack or defence of a party?
vi) What is the important condition for allowing an application for amendment in the pleadings?

Analysis: i) A plea in the alternative can naturally arise and can co-exist with the main plea, which was not taken in the plaint at the time of filing of the suit then such a plea can be introduced by seeking amendment in the pleadings.
ii) A line of distinction is to be drawn between an alternative case and an inconsistent case which are neither synonymous nor interchangeable.
iii) No two facts can be said to be inconsistent if both could have happened and the test of inconsistency is that a plain which contains both cannot be verified as true but a party can put forward more than one source of his right or defence in which case he is pleading in the alternative. The judicial consensus seems to be that an alternative or inconsistent plea can be raised but contradictory and mutually destructive pleas cannot be taken.
iv) The mere delay in filing of an application for amendment in pleadings is not a good ground for refusal of the same, rather the essence of the ratio of the law is that the proposed amendment may not introduce a new and changed case/claim and it would not likely change the nature, complexion and cause of action.
v) Allowing or refusing to allow amendment of pleadings is an act, which hits at the root of the attack or defence of a party, as the case may be. The parties cannot lead evidence beyond their pleadings and hence it affects the production of evidence as well. Ultimately, the case of a party, refused amendment in genuine

cases, is most likely to be seriously jeopardized. The question of amendment is not of such an interlocutory nature, which could subsequently, be rectified at the time of final decision of case.

vi) A very important condition that the nature of the suit is so far as its cause of action is concerned is not changed by the amendment where it falls under the first part of rule 17 or the second part, because when the cause of action is changed the suit itself would become different from the one initially filed. The bundle of facts narrated in the plaint which constitute the cause of action, as the application for amendment in the pleadings, would not have suffered any material change if the request would have been allowed.

Conclusion:

i) A new plea can naturally arise and can co-exist with the main plea, which was not taken in the plaint at the time of filing of the suit then such a plea can be introduced by seeking amendment in the pleadings.

ii) An alternative case and an inconsistent case are neither synonymous nor interchangeable.

iii) Two facts cannot be said to be inconsistent if both could have happened.

iv) Mere delay in filing of an application for amendment in pleadings is not a good ground for refusal of the same.

v) Yes, allowing or refusing to allow amendment of pleadings is an act, which hits at the root of the attack or defence of a party, as the case may be.

vi) An important condition is that the amendment does not alter the nature of the suit, specially in regards to the underlying cause of action.

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11. **Lahore High Court**
Iqbal Hussain, etc. v. Govt. of the Punjab, etc.
Regular First Appeal No.10887 of 2021
Mr. Justice Shahid Bilal Hassan, Mr. Justice Masud Abid Naqvi
https://sys.lhc.gov.pk/appjudgments/2024LHC2278.pdf

Facts: Through this Regular First Appeal, the petitioners have assailed learned referee court judgment wherein the reference petition was dismissed and the award was upheld.

Issues:

i) How a party can prove claim of inadequate assessment of acquired land and potential value of land?

ii) What is basic requirement of Article 71 of Qanun-e-Shahadat Order, 1984?

iii) What is the spirit of discharging the burden of proof under Article 117 of Qanun-e-Shahadat Order, 1984?

Analysis: i) The party is under legal obligation to prove claim of inadequate assessment of acquired land and potential value of land through corroborative and unimpeachable oral and documentary evidence and in order to do so the party has to depose in examination in chief any contemporary sale transaction of adjacent land and exhibit any documentary evidence i.e. sale deed or sale mutation showing value of adjacent land.

ii) Under Article 71 of Qanun-e-Shahadat Order, 1984, it is basic requirement that the oral evidence must, in all cases whatsoever, be direct. The use of word "must" in the Article imposes a duty on the Court to exclude all oral evidence which is not "direct" and hearsay evidence is not admissible subject to certain exceptions provided in Articles 46 & 64 Qanune-Shahadat Order, 1984.
iii) There is no cavil to the proposition that if a person asserts his legal rights or liability depending upon the existence of certain facts, he has to prove those facts and to discharge the burden of proof under Article 117 of Qanun-e-Shahadat Order, 1984. In view of the meaning of "onus probandi", if no evidence is produced by a person on whom the burden lies then such issue must be decided against him.

Conclusion: i) The party is under legal obligation to prove claim of inadequate assessment of acquired land and potential value of land through corroborative and unimpeachable oral and documentary evidence.
ii) Under Article 71 of Qanun-e-Shahadat Order, 1984, it is basic requirement that the oral evidence must, in all cases whatsoever, be direct.
iii) If a person asserts his legal rights or liability depending upon the existence of certain facts, he has to prove those facts.

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12. **Lahore High Court**
Mubashar Ali Shah v. Muhammad Sharif and others
Civil Revision No.58370 of 2021
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC2492.pdf

Facts: Through this Civil Revision, the petitioner has challenged the vires of judgments passed by Appellate Court and Trial Court whereby suit filed by the petitioner under the Punjab Partition of Immovable Property Act, 2012 was dismissed.

Issues: i) Whether impleading all the co-owners in partition suit is mandatory under section 4 of the Punjab Partition of Immovable Property Act, 2012?
ii) Whether Passing of preliminary decree in partition suit is mandatory?
iii) What inference can be drawn on non-appearance of the plaintiff in the witness box?
iv) Under what circumstances findings cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908?

Analysis: i) Section 4 of the Punjab Partition of Immovable Property Act, 2012 provides that, 'an owner of immovable property may file a suit for partition of the property, giving details of the property, citing all other co-owners as defendants and attaching all the relevant documents in his reach or possession.' When the plaintiff does not implead all the co-owners in the suit, then the suit is not maintainable and competent.
ii) Passing of preliminary decree in partition suit under Punjab Partition of Immovable Property Act, 2012 is not provided.

iii) Non-appearance of the plaintiff in the witness box and making deposition on oath goes against him as it can be inferred that he has not put his appearance just to avoid the test of cross examination or with an intention to suppress some material facts from the court, then it will be open for the court to presume adversely against said party as provided in Article 129(g) of Qanun-e-Shahadat Order 1984.
iv) When the learned courts below have rightly appreciated and evaluated evidence of the parties and have reached to a just conclusion, concurrently then the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908.

Conclusion: i) Impleading all the co-owners in partition suit is mandatory under section 4 of the Punjab Partition of Immovable Property Act, 2012.
ii) Passing of preliminary decree in partition suit under Punjab Partition of Immovable Property Act, 2012 is not provided.
iii) Non-appearance of the plaintiff in the witness box and making deposition on oath goes against him.
iv) The findings of courts below cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908 when reached to a just conclusion concurrently.

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13. **Lahore High Court**
Muhammad Afzal and others v. Abdul Hameed and others
Civil Revision No.66888 of 2021
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC2501.pdf

Facts: Facts in concision are as such that the petitioners instituted a suit for specific performance of contract with regards to the suit property against the respondents/defendants, which was duly contested by them while submitting written statement. The trial Court decreed the suit in favour of the petitioners. The respondents/defendants preferred an appeal. The appellate Court accepted the appeal, set aside the judgment and decree and dismissed suit of the petitioners; hence, the instant Revision Petition.

Issue: i) What is the limitation period for filing of suit for specific performance as per Limitation Act, 1908?
ii) Whether the impediment and hurdle of limitation would come in the way even after the transfer of possession after payment of entire sale consideration?
iii) Whether the right created under section 53-A of the Transfer of Property Act, 1882 can be vanished by any length of time?
iv) Whether the High Court has the authority to undo the decision of appellate court in supervisory jurisdiction if the appellate court has misread evidence of the parties?

Analysis: i) … Article 113 of the Limitation Act, 1908 provides three years for filing suit for specific performance from the date fixed for the performance or if no such date is

fixed, when the plaintiff has notice that performance is refused. In this case, no cut-off date for performance of contract was fixed in the Iqrarnama, therefore, the second part of the above said Article would attract, which provides that if no such date is fixed, when the plaintiff has notice that performance is refused.

ii) Though for filing of suit for specific performance of a contract, the prescribed period of limitation is three years but as the petitioners have instituted the suit on the basis of Iqrarnama which is coupled with transfer of possession after payment of entire sale consideration, the impediment and hurdle of limitation would not come in their way, because where a plaintiff(s) continues to enjoy a right then the statute of limitation cannot take away such a right as the law of limitation is not meant to take away an existing right. It only bars remedy to gain one's lost right.

iii) The right created under section 53-A of the Transfer of Property Act, 1882 is an existing right and is not vanished by any length of time. There cannot be any expiry date for enjoyment of a right conferred upon a transferee in possession under section 53-A of the Act ibid.

iv) The appellate Court has failed to adjudicate upon the matter in hand by appreciating law on the subject; thus, the appellate Court has misread evidence of the parties and when the position is as such, High Court is vested with authority to undo the same in exercise of supervisory jurisdiction under section 115, Code of Civil Procedure, 1908.

Conclusion: i) Article 113 of the Limitation Act, 1908 provides three years for filing suit for specific performance from the date fixed for the performance or if no such date is fixed, when the plaintiff has notice that performance is refused.

ii) See above in analysis No. ii.

iii) The right created under section 53-A of the Transfer of Property Act, 1882 is an existing right and is not vanished by any length of time.

iv) If the appellate Court has misread evidence of the parties, High Court is vested with authority to undo the same in exercise of supervisory jurisdiction under section 115, Code of Civil Procedure, 1908.

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14. **Lahore High Court**
Muhammad Afzal v. Binyameen Sajid
R.F.A.No.11759 of 2021
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC2511.pdf

Facts: Through this Appeal, appellant has assailed the judgment and decree passed by the learned Trial Court in a suit instituted by the appellant for recovery of amount on the basis of cheque under Order XXXVII, Rules 1 and 2, Code of Civil Procedure.

Issues: i) How the endorsement on a negotiable instrument with regard to part-payment ought to be made?

ii) What would be the effect of non-compliance of the procedure provided in section 56 of Negotiable Instrument Act 1881?

iii) What would be the remedy for the recovery of balance amount if procedure as provided in section 56 of Negotiable Instrument Act 1881 is not adopted?

Analysis: i) Section 56 of the Negotiable Instruments Act, 1881,..specifically provides for an endorsement on a Negotiable Instrument with regards to part-payment and the instrument can there-after be negotiated for the balance amount. If the drawer and the payee of the cheque adopt the procedure given in section 56 of the Act, 1881, then it would be open to the payee of the cheque to present the cheque for payment of only the endorsed balance amount, due to him.
ii) Without adopting the procedure as provided in section 56 ibid, the cheque cannot be presented for encashment and suit under Order XXXVII, Rules 1 and 2, Code of Civil Procedure, 1908 cannot be filed.
iii) A suit for recovery of balance amount of cheque before a Court of plenary jurisdiction has to be instituted.

Conclusion: i) See above analysis No. i.
ii) See above analysis No. ii.
iii) If procedure as provided in section 56 of Negotiable Instrument Act 1881 is not adopted then A suit for recovery of balance amount of cheque before a Court of plenary jurisdiction is to be instituted.

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15. **Lahore High Court**
Muhammad Bashir Ahmad and another v. Province of Punjab through District Officer (Revenue) others
Civil Revision No.4663 of 2015
Mr.Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC2515.pdf

Facts: The Petitioner filed suit for declaration which was dismissed by Trial Court. The petitioners being dissatisfied and aggrieved preferred an appeal but the same was dismissed vide impugned judgment and decree by the Appellate Court; hence, the instant Revision Petition.

Issues: i) Does Rule 1(3) of Order XXIII of CPC preclude from instituting any fresh suit where the earlier suit having same subject matter was withdrawn without seeking any permission to institute the same afresh?
ii) Once limitation began to run, does it stop in the absence of any solid reason?
iii) Can the children of pre-deceased daughter died before the promulgation of the Muslim Family Personal Law Ordinance 1961 avail the benefit of section 4 of the Ordinance 1961?
iv) Can the concurrent findings on record be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908?

Analysis: i) There is no denial to the fact that earlier a suit germane to the disputed inheritance mutation No.35 was instituted by the present petitioners on 21.12.2001 in Tehsil Samundari, copy whereof was placed on record as Ex.D3, which was dismissed as

withdrawn on 02.10.2002 vide Ex.D5 after the statement of the learned counsel for plaintiffs in the said suit to the effect that he withdraws the suit and now there is no dispute between the parties and that the parties have reached to a settlement; meaning thereby the said suit was withdrawn due to some settlement and without seeking any permission to institute the same afresh; therefore, the present suit was hit by Rule 1(3) of Order XXIII, Code of Civil Procedure, 1908….. In the present case, no permission, as stated above, was sought for filing the suit afresh, therefore, the petitioners were precluded from instituting the suit under discussion….. The facts of the case in hand are identical to the facts of the above said judgment of the Supreme Court of Pakistan because in the present case, the withdrawal of the earlier suit by learned counsel for the petitioners is simpliciter and no permission to file afresh was sought.

ii) Even the suit under discussion is barred by limitation, because the earlier suit was withdrawn on 02.10.2002 and the suit under discussion was instituted after about eight years from its withdrawal…..The learned appellate Court has rightly observed that once limitation began to run it does not stop in the absence of any solid reason.

iii) Additionally, the documentary evidence produced by the petitioners as to death of Mst. Saidan Bibi and Fateh Muhammad is not confidence inspiring and cogent rather it has surfaced on record through report of Secretary Union Council concerned that there is no entry of death of Fateh Muhammad in the register of deaths for the year 1961 and same is the position as to entry of death of Mst. Saidan Bibi in the year 1964 and Maqsoodan Bibi in the year 1968. As against this, the documents Ex.D1 and Ex.D2 being public documents fully support the stance of the respondents/ defendants. Therefore, it can safely be concluded and held that Mst. Saidan Bibi, having died prior to death of Fateh Muhammad, who died on 10.11.1960 was rightly excluded from the inheritance mutation No.35 as to legacy of Fateh Muhammad, because at that time Muslim Family Personal Law Ordinance, 1961 had not been promulgated and enacted; therefore, no benefit of section 4 of the Ordinance, 1961 ibid was available to the present petitioners.

iv) Pursuant to the above, the learned Courts below have rightly appreciated and evaluated evidence of the parties and have reached to a just conclusion, concurrently, that the petitioners have failed to prove their case by leading cogent, confidence inspiring and trustworthy evidence. As such, the concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908.

Conclusion: i) Rule 1(3) of Order XXIII of CPC precludes from instituting any fresh suit where the earlier suit having same subject matter was withdrawn without seeking any permission to institute the same afresh.

ii) Once limitation began to run, it does not stop in the absence of any solid reason.

iii) The children of pre-deceased daughter died before the promulgation of the Muslim Family Personal Law Ordinance 1961 cannot avail the benefit of section 4 of the Ordinance 1961.

iv) The concurrent findings on record cannot be disturbed in exercise of revisional jurisdiction under section 115 of Code of Civil Procedure, 1908.

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16. **Lahore High Court**
Javed Islam v. Tahir Islam
Civil Revision No.18167 of 2021
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC2567.pdf

Facts: The petitioner filed the Civil Revision being aggrieved by the concurrent findings of the lower fora whereby the suit for declaration of the petitioner was dismissed.

Issue: Object and significance of formulating "Issues".

Analysis: It is observed that the term "issue" in a civil case means a disputed question relating to rival contentions in a suit. For a correct and accurate decision in the shortest possible time in a case, it is necessary to frame the correct and accurate issues. Issues mean a single material point of fact or law in litigation that is affirmed by one party and denied by the other party to the suit and that subject of the final determination of the proceedings. As per the Order XIV Rule 1(4) of the Code of Civil Procedure, 1908, issues are of two kinds: (1) Issues of fact, (2) Issues of Law. Issues, however, may be mixed issues of fact and law. Rule 2(1) of Order XIV provides that where issues: both of law and fact arise in the same suit, notwithstanding that a case may be disposed of on a preliminary issue, the court should pronounce judgment on all issues, but if the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first, if that issue relates to: The jurisdiction of the court; or A bar to the suit created by any law for the time being in force.
For that purpose, the court may, if it thinks fit, postpone the settlement of the other issues until the issues of law have been decided. An obligation is cast on the court to read the plaint and the written statement and then determine with the assistance of the learned counsel for the parties, material propositions of fact or of law on which the parties are at variance. The issue shall be formed on which the decision of the case shall depend. Furthermore, at any time before passing of decree, court can amend framed issues on those terms, which it thinks fit. However, it cannot be exercised when it alters nature of suit, permits making of new case or alters stand of parties through rising of inconsistent pleas. When the lower court omitted to frame an issue before trying a matter in controversy, the appellate court can frame the issue and refer it for trial to the lower court. There is no need to remand the entire case.

Conclusion: As the issues framed by the learned trial Court did not cover the real controversy hence, the revision petition was allowed and the cases were remanded to the learned trial Court with a direction to re-frame consolidated issues and then to decide the cases afresh on merits in accordance with law.

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17. **Lahore High Court**
Muhammad Rehman and others v. Asim Rasheed and others
Civil Revision No.44458 of 2021
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC2583.pdf

Facts: The father of the petitioners instituted a suit for specific performance against the respondents wherein the trial Court dismissed application for grant of temporary injunction. The petitioners being aggrieved preferred an appeal and the appellate Court accepted the appeal and passed restraining order as to change of possession of the suit property. The respondents filed an application under section 36, 94(c), 151, read with Order XXXIX Rule 2 and Order XXI, Rule 101, Code of Civil Procedure, 1908 for restoration of possession according to appeal, which was resisted by the present petitioner(s). The appellate Court accepted the said application; hence, the instant revision petition.

Issue: Whether the appellate court after finally deciding the matter of grant of temporary injunction can entertain an application under section 36, 94(c), 151, read with Order XXXIX Rule 2 and Order XXI, Rule 101, CPC for restoration of possession according to appeal?

Analysis: The learned appellate Court after deciding the appeal on 14.12.2016 had become functus officio, because no matter remained pending with it and the suit inter se the parties was sub-judice before the learned trial Court. If any violation of order dated 14.12.2016 was ommitted by either of the party, the aggrieved person had remedy of filing application under Order XXXIX, Rule 2-C read with section 144 of the Code of Civil Procedure, 1908 seeking restitution of possession and contempt proceedings for violation of the Court's order….. In view of [Section 144 & Sub-Rule 2-C of Order XXXIX, CPC], the Court of first instance, where the suit was pending and subjudice, had to be resorted to for redressal of grievance because law has provided a sufficient remedy in the form of filing an application under Order XXXIX, Rule 2-C read with section 144, Code of Civil Procedure, 1908 in case of any violation of the injunctive order passed in favour of a party. The application under section 36, 94(c), 151 read with Order XXXIX, Rule 2 and Order XXI, Rule 101, Code of Civil Procedure, 1908 was not maintainable before the learned appellate Court, because Rule 101 of Order XXI, Code 1908 cannot be read in isolation rather the same would be considered and read with preceding Rule 100….. [Rule 100 & 101 of Order XXI] vividly demonstrate that the same relate to right of a third person who is in possession of the property, for which a decree is passed and not related to the parties to the suit. However, here the matter is still sub-judice before the learned trial Court and has not finally been decided; therefore, the proper remedy as observed above was not under sections 36, 94(c), 151 read with Order XXXIX, Rule 2 and Order XXI, Rule 101, Code of Civil Procedure, 1908 rather was under Order XXXIX, Rule 2-C read with section 144, Code of Civil Procedure, 1908, that too, before the Court of first instance i.e. civil Court where the suit inter se the parties is pending.

Conclusion: The appellate court after finally deciding the matter of grant of temporary injunction cannot entertain an application under section 36, 94(c), 151, read with Order XXXIX Rule 2 and Order XXI, Rule 101, CPC for restoration of possession according to appeal. The proper remedy was rather under Order XXXIX, Rule 2-C read with section 144, Code of Civil Procedure, 1908, that too, before the Court of first instance i.e. civil Court where the suit inter se the parties is pending.

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18. **Lahore High Court**
Rasoolan Bibi v. The State, etc.
Writ Petition No.82843 of 2023
Miss. Justice Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2024LHC2265.pdf

Facts: Through the instant Petition the legality and validity of the impugned order passed by Judicial Magistrate have been challenged, whereby the accused was discharged from the case for insufficient incriminating material regarding the accused's implication.

Issues: i) What is the standard of proof required in the civil and criminal proceedings and whether the findings recorded in one proceeding be treated as final or binding in the other proceedings?
ii) When Section 195 of the Criminal Procedure Code (Cr.P.C) would be applicable in relation to documents?

Analysis: i) The standard of proof required in the two proceedings is entirely different. Civil cases are decided based on preponderance of evidence, while in a criminal case, the entire burden lies on the prosecution, and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both cases have to be decided based on the evidence adduced therein.
ii) Section 195 Cr.P.C would be attracted only when the offences enumerated in the said provision have been committed concerning a document after it has been produced or given in evidence in a proceeding in any court. The existence of the document is not denied.

Conclusion: i) The standard of proof required in the civil and criminal proceedings is entirely different. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other.
ii) Section 195 Cr.P.C would be attracted only when the offences enumerated in the said provision have been committed concerning a document after it has been produced or given in evidence in a proceeding in any court. The existence of the document is not denied.

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19. **Lahore High Court**

Muhammad Mumtaz, etc. v. The State, etc.
Crl.Appeal No. 1215 of 2014
Miss. Justice Aalia Neelum
https://sys.lhc.gov.pk/appjudgments/2015LHC9219.pdf

Facts: Appellants were involved in offence under Sections 365-B/376 PPC and they were tried. The trial court seized with the matter in terms of judgment while convicted the appellants under Section 496-A P.P.C and sentenced them to rigorous imprisonment for the period of seven years each with fine of Rs.50,000/- each and in case of default thereof, further undergo six months S.I each. The benefit of Section 382-B Cr.P.C was also extended in favour of the appellants. Feeling aggrieved by the judgment, the appellants assailed their conviction.

Issue: What are the essential ingredients to constitute an offence under section 365-B of Pakistan Penal Code?

Analysis: If a person is sought to be prosecuted for the offence under Section 365-B of P.P.C., must have kidnapped or abducted any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person against her will or in order that she may be forced or seduced to illicit inter course or knowing to be likely that she will be forced or seduced to illicit inter course.

Conclusion: Essential ingredients to constitute an offence under section 365-B of Pakistan Penal Code are; must kidnap or abduct any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person against her will or in order that she may be forced or seduced to illicit inter course or knowing to be likely that she will be forced or seduced to illicit inter course.

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20. **Lahore High Court**
Humayon Sajjad v. Aslam Khan
Case No:RFA No.45873/2023.
Mr. Justice Abid Aziz Sheikh, Mr.Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC2268.pdf

Facts: The appellant through this Regular First Appeal before High Court has challenged the decision of trial court, wherein his suit for possession through specific performance was dismissed due to non-deposit of remaining sale consideration.

Issues: i) Whether the court can dismiss the suit of specific performance of an agreement to sell for non-deposit of the remaining sale consideration?
ii) Whether the deposit of sale consideration amount demonstrates the capability, readiness and willingness of the party (either plaintiff or defendant) to perform its part of contract?
iii) Whether the law requires that the balance sale consideration must be tendered or deposited in court?
iv) What is meant by the concept of willingness and readiness on the part of the vendee to perform a contract of sale of immovable property, and if he does not

deposit the remaining sale consideration?

v) Whether directing the vendee to deposit remaining sale consideration by the court is termed as harsh, oppressive or unlawful order?

vi) Whether the court can dismiss the suit for specific performance of an agreement to sell of the party for non-deposit of balance sale price without giving notice to him?

Analysis: i) It is mandatory for the person whether plaintiff or defendant who seeks enforcement of the agreement under the Specific Relief Act, 1877, that on first appearance before the Court or on the date of institution of the suit, it shall apply to the Court getting permission to deposit the balance amount and any contumacious/omission in this regard would entail in dismissal of the suit or decretal of the suit, if it is filed by the other side.

ii) It is now well settled that a party seeking specific performance of an agreement to sell is essentially required to deposit the sale consideration amount in court. In fact, by making such deposit the plaintiff demonstrates its capability, readiness and willingness to perform its part of the contract, which is an essential pre- requisite to seek specific performance of a contract. Failure of a plaintiff to meet the said essential requirement disentitles him to the relief of specific performance, which undoubtedly is a discretionary relief.

iii) The law does not require that the balance sale consideration must be tendered or deposited in court, but such tender/deposit helps establish that the buyer was not at fault. It is a wrong contention that only after the court directs the deposit of the sale consideration, is it to be deposited. It is a fact that invariably the value of money depreciates over time and that of land appreciates. Courts adjudicating cases should not be unmindful of this reality and should endeavour to secure the interest of both parties. In a suit for specific performance of land, if the seller/vendor has refused to receive the sale consideration, or any part thereof, it should be deposited in court and invested in some government protected security (such as Defence or National Savings Certificates); in case the suit is decreed the seller would receive the value of money which prevailed at the time of the contract and in case the buyer loses he can similarly retrieve the deposited amount.

iv) In cases arising out of sale of immovable property a vendee seeking specific performance has to demonstrate his readiness and willingness to perform his part of reciprocal obligation as to payment of balance sale consideration. In the first place, willingness to perform ones contract in respect of purchase of property implies the capacity to pay the requisite sale consideration within the reasonable time. In the second place, even if he has the capacity to pay the sale consideration, the question still remains whether he has the intention to purchase the property. On consideration of all the facts, it appears that the vendee is not in a position to pay the balance sale consideration.

v) The purpose of directing the vendee to deposit remaining sale consideration is on one hand to enable him to demonstrate his readiness, ableness and willingness to perform his contractual obligation and on the other hand also to safeguard the

rights of the vendor. Therefore in ordinary circumstances, order by court to deposit remaining sale consideration, cannot be termed as harsh, oppressive or unlawful order.

vi) Unless the party would have been put to notice that the non-deposit of the balance sale price would be deemed to be his incapability of performing his part of the contract as envisaged under section 24(b) rendering the contract non-enforceable, the suit could not have been dismissed. Even otherwise, the language employed in Order XVII, Rule 3 by using word, the court may, notwithstanding such default, proceed to decide the suit forthwith, is permissive and discretionary and does not in all circumstances entail penal consequences.

Conclusion: i) It is mandatory for the person whether plaintiff or defendant who seeks enforcement of the agreement under the Specific Relief Act, 1877, that on first appearance before the Court or on the date of institution of the suit, it shall apply to the court getting permission to deposit the balance amount otherwise, it would entail in dismissal of the suit or decretal of the suit, if it is filed by the other side.

ii) It is now well settled that a party seeking specific performance of an agreement to sell is essentially required to deposit the sale consideration amount in court, Failure of the party to meet the said essential requirement disentitles him to the relief of specific performance, which undoubtedly is a discretionary relief.

iii) The law does not require that the balance sale consideration must be tendered or deposited in court.

iv) In the first place, willingness to perform ones contract in respect of purchase of property implies the capacity to pay the requisite sale consideration within the reasonable time. In the second place, even if he has the capacity to pay the sale consideration, the question still remains whether he has the intention to purchase the property.

v) In ordinary circumstances, order by court to deposit remaining sale consideration, cannot be termed as harsh, oppressive or unlawful order.

vi) The suit cannot be dismissed unless the party would have been put to notice that the non-deposit of the balance sale price would be deemed to be his incapability of performing his part of the contract.

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21. **Lahore High Court**
Tariq Mehmood v. Tahir Farooq
R.F.A No.80927/2022
Mr. Justice Abid Aziz Sheikh, Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC2425.pdf

Facts: This Appeal is directed against judgment, passed by the Civil Judge 1st Class by virtue of which suit of the petitioner for recovery of damages, on account of malicious prosecution was dismissed.

Issues: i) What does the term 'malice' mean?

ii) Whether the plaintiff in a suit for malicious prosecution must also establish

absence of "reasonable and probable cause"?

iii) Can there be any universally accepted phenomenon that in case the criminal prosecution fails, then the accused would be automatically entitled for recovery of damages?

iv) What is meant by 'acquittal on merits'?

v) What is the concept of 'the benefit of doubt'?

Analysis: i) The term "malice" means the presence of some improper and wrongful motive - that is to say, an intent to use the legal process in question for some objective other than its legally appointed and appropriate purposes. Malicious prosecution means to obtain a collateral advantage. It is rather, always dependent on the facts that whether such prosecution was based on malice or not. The act of a defendant is to be seen, that is to say, was it by spite or ill will or any indirect or improper motive. Malice can be presumed from the facts as they emerge from the evidence recorded during the trial. Mere absence of reasonable and probable cause does not justify, as a matter of law, the conclusion that the prosecution was malicious, though it is quite conceivable that the evidence which is sufficient to prove absence of reasonable and probable cause may also establish malice. Moreover, malice alone would not be enough.

ii) The plaintiff in a suit for malicious prosecution must also establish absence of "reasonable and probable cause" and the onus to prove thereof is always on the person who asserts in affirmative -the appellant in the present case. The term "reasonable and probable cause" means that the prosecutor in a criminal case had an honest belief in the guilt of the accused, based on reasonable grounds. If "the reasonable and probable cause" is established, question of malice becomes irrelevant. The conditions precedent for filing the suit for malicious prosecutions are the aforesaid conditions, which should coexist before the defendant in such suit for malicious prosecution can be burdened with liability.

iii) No doubt it is true that the acquittal of a person in a criminal case sometimes gives presumption that there was no reasonable cause for his prosecution, but this presumption is rebuttable and there cannot be any universally accepted phenomenon that in case the criminal prosecution fails, then the accused would be automatically entitled for recovery of damages as otherwise in all those cases where the prosecution fails, it would give rise to damages in favour of an accused. Therefore, the nature of acquittal has to be kept in view as well. Meaning thereby that whether the acquittal was by way of giving a benefit of doubt or it was based on weakness of evidence or whether it was an acquittal on merits.

iv) As to what precisely is meant by "acquittal on merits" in strict sense, is not quite clear. An acquittal on the ground of extreme weakness of the prosecution evidence can also be treated as an acquittal on merits. But it is indeed true that an acquittal by way of giving benefit of doubt is an acquittal which is not on merits.

v) At this juncture, it would be imperative to examine the concept of "the benefit of the doubt". It is a principle that allows for the possibility that someone or something may not be innocent or truthful, even if there is not enough evidence to

prove it. It is often used in situations where there is uncertainty or doubt about someone's actions or intentions. Acquittal on extension of the benefit of the doubt does not mean that the accused were falsely implicated and possibility would not be excluded that the accused might also have been involved in the matter but for want of evidence beyond doubt was not led by the prosecution so as to effect conviction.

Conclusion: i) See above analysis No. i.
ii) The plaintiff in a suit for malicious prosecution must also establish absence of "reasonable and probable cause".
iii) There cannot be any universally accepted phenomenon that in case the criminal prosecution fails, then the accused would be automatically entitled for recovery of damages.
iv) See above analysis No. iv.
v) See above analysis No. v.

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22. **Lahore High Court**
Wajahat Hussain Hussaini etc. v. Commissioner PESSI, etc.
W.P.No. 60763/2023
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2024LHC2239.pdf

Facts: Through this Constitutional Petition, the petitioners have challenged the office order, whereby the Governing Body of Punjab Employees Social Security Institution (PESSI) amended the Punjab Employees Social Security Institution (Revised Service) Regulations, 2008 (Regulations) and also seeking direction against respondents to comply with the order passed by Chairman, Governing Body PEESI (Chairman) and appointed the petitioners against the post of Assistant against 25% graduate quota under Regulations.

Issues: i) Whether Regulations framed under section 80 of Punjab Employees Social Security Ordinance, 1965 are statutory and constitutional jurisdiction of High Court can be invoked for its enforcement?
ii) Whether Regulations can be amended by the Governing Body?

Analysis: i) The PESSI has been established under the Ordinance. Under section 79 of the Ordinance, the Provincial Government may by notification in the official gazette make Rules to carry out the purpose of the Ordinance, whereas under section 80 of the Ordinance, the Governing Body may by notification in the official gazette make Regulations not in consistent with the provision of the Ordinance or the Rules. Under sub-section 2(viii)(x) of section 80 of the Ordinance, the Regulations may also provide for the employment of the officers and staff for administration of the affairs of the institution as well as power of the Commissioner with regard to the appointment, transfer, promotion, dismissal and other matter effecting the staff of the institution… From the plain reading of section 79 and 80 of the Ordinance ibid, it is evident that Federal Government may make rules for carrying out the purpose

of the Ordinance, whereas Governing Body may make regulations for carrying out functions of the Ordinance including the appointments of officers and staff of PESSI. The Governing Body is defined under section 2(13) of the Ordinance meaning Governing Body of the institution, whereas under section 5 of the Ordinance, Governing Body will consists of members to be appointed by Government by notification. No doubt, the Governing Body members are appointed by Government but they are not the Government. It is admitted position between the parties that the Regulations in question are framed under section 80 of the Ordinance by the Governing Body an not by the Provincial Government or with approval of the Provincial Government and therefore, same does not have the status of statutory Regulations. The position would have been different if the terms and conditions sought to be implemented through this petition, were framed by the Provincial Government by way of rules under section 79 of the Ordinance instead of Regulations by Governing Body under section 80 of the Ordinance. The similar regulations framed by the Authority under section 45 of the National Data and Registration Authority Ordinance, 2000 (Ordinance of 2000) were declared to be non-statutory by Supreme Court for the reason that same were not framed by the Federal Government. This Court in Amir Shahzad and 3 others vs. Federation of Pakistan and 3 others (2024 PLC (C.S.) 33) followed the said judgment of Supreme Court and held that constitutional petition in such situation is not maintainable.

ii) Now coming to the next question i.e. that whether regulations could be amended by the Governing Body and office order dated 31.8.2023 could be issued, suffice it to note that under section 80(2)(viii) and (x) of the Ordinance, the Governing Body has ample power to make regulations for the employment of the officer and staff and can also frame regulations for their transfer, promotion, dismissal and other matters. The said power to frame regulations includes the power to amend the regulations. Therefore, it cannot be said that the amendment in Regulations is without jurisdiction.

Conclusion: i) Regulations framed under section 80 of Punjab Employees Social Security Ordinance, 1965 are non-statutory and constitutional jurisdiction of High Court cannot be invoked for its enforcement.

ii) The Governing Body can amend the Regulations framed under section 80 of Punjab Employees Social Security Ordinance, 1965.

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23. **Lahore High Court**
Abdul Hakeem v. The State
Criminal Appeal No.835 of 2022
The State v. Abdul Hakeem
Murder Reference No.44 of 2022
Mr. Justice Sadaqat Ali Khan, Mr. Justice Ch. Abdul Aziz
https://sys.lhc.gov.pk/appjudgments/2024LHC2405.pdf

Facts: The appellant involved in case F.I.R registered under Section 302 PPC was tried, convicted and sentenced. He filed Criminal Appeal against his conviction and

sentence, whereas the trial court sent reference for the confirmation or otherwise of death sentence so awarded to him. Since both matters are *inter'se* connected, hence are being disposed of through this single judgment.

Issues: i) When conviction can be awarded to an accused on the basis of circumstantial evidence?
ii) Whether the expert could still be summoned as court witness although the report of the Punjab Forensic Science Agency is per-se admissible?
iii) What does doctrine of analysis require whilst weighing evidence regarding DNA report?

Analysis: i) For awarding conviction to an accused, the incriminating circumstances must be so closely inter-woven with each other that from their appraisal no conclusion other than guilt of accused is to be drawn. Any break in the chain of circumstances or legal inadmissibility of its any part renders such evidence unworthy of credence and cannot be used for raising the superstructure of conviction.
ii) Although**,** the report through necessary implication of section 9(3) of the Punjab Forensic Science Agency Act 2007 was per-se admissible but the expert could still be summoned as court witness to remove ambiguity arising out of it.
iii) The DNA evidence can attain admissibility if prosecution satisfactorily proves the process of sampling, safe custody and onward transmission to the office of PFSA which foregoing process is called doctrine of analysis. Any defect in the aforementioned process makes even the positive DNA report doubtful in nature forcing the courts to discard it from consideration.

Conclusion: i) Conviction can only be awarded to an accused on the basis of circumstantial evidence when it impeccably connects the accused with the commission of crime.
ii) The report of the Punjab Forensic Science Agency Act 2007 is per-se admissible but the expert could still be summoned as court witness for examination and re-examination.
iii) The doctrine of analysis stresses for flawless sampling, correct packing, safe custody and transmission to the office of expert which all authenticate the DNA report.

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24. **Lahore High Court**
Aamir Khan v. The State etc.
Criminal Appeal No.986 of 2022
Naeem Khan v. Amraiz Khan etc.
Criminal Appeal No.988 of 2022
Naeem Khan v. Aamir Khan etc.
Criminal Revision No.137 of 2023
The State v. Aamir Khan
Murder Reference No.77 of 2022
Mr. Justice Sadaqat Ali Khan, Mr. Justice Ch. Abdul Aziz.
https://sys.lhc.gov.pk/appjudgments/2024LHC2388.pdf

Facts: On conclusion of trial in case registered under Sections 302, 109 & 34 P.P.C., the Trial Court convicted and sentenced the appellant while acquitting his co-accused. The appellant filed Criminal Appeal challenging his conviction and sentence, whereas complainant preferred Criminal Appeal against the acquittal of co-accused as well as Criminal Revision seeking enhancement of amount of compensation to be paid by appellant. Moreover, the Trial Court sent murder reference for the confirmation or otherwise of death sentence awarded to appellant. Since all these matters are inter se connected, hence are being decided through this single judgment.

Issues: i) What would be consequent impact upon prosecution case if there is an unexplained delay in registration of FIR pertaining incident of homicide?
ii) What would be effect of non-appearance of police official in prosecution evidence, who is alleged to have transmitted the complaint from Hospital to Police Station?
iii) What inference would be drawn if the police papers are provided to medical officer with a delay after completion of complaint in homicide incident?
iv) What is the status of credibility of testimony of an eye-witness if he evasively replies to material questions or expresses ignorance regarding them?
v) What inference would be drawn if the eye-witnesses are closely related to the victim of murderous assault but they do not make any effort to save his life?
vi) What is obligation of an investigation officer while conducting an investigation?
vii) How evidence of eye-witnesses would be weighed if there is a conflict between medical and ocular account?

Analysis: i) The promptly registered FIR is generally considered a ground favourable to the prosecution as it normally excludes the possibility of concoction and gives forth clue about the acclaimed presence of eye-witnesses at the spot.
ii) For all practical purposes, the evidence of police official who is alleged to have transmitted the complaint from Hospital to Police Station has its own importance.
iii) After completion of complaint in homicide incident, there rests no justification for delay in delivery of police papers to the Medical Officer.
iv) For ascertaining the truth behind the claim of an eye-witness about his acclaimed presence, his evidence before acceptance, should be put to the test of strict scrutiny.
v) If the eye-witnesses are closely related to the victim of murderous assault but they do not make any effort to save his life, then such conduct of the eye-witnesses does not commensurate with the normal human response according to which a close relative is required to make effort for shifting his close relative, having met such tragic incident, to a medical facility.
vi) Carrying of investigation while being driven by the sentiments and emotions and thereby giving of opinion favourable to the legal heirs of the deceased is a conduct not befitting with the job of an impartial investigator.
vii) Furnishing of medical evidence in a case of homicide is not a simple formality, instead it enables the court to adjudge the veracity of eye-witnesses with reference

to their claim of having seen the incident.

Conclusion: i) Unexplained delay in registration of FIR pertaining incident of homicide gives rise to the hypothesis about possible absence of witnesses from the crime scene and at the same time as well as ignites theories of some fabrication and padding of facts.
ii) The element of dispatching the complaint from Hospital to Police Station would not be proved if the police official, who is alleged to have transmitted the complaint from Hospital to Police Station, does not appear in prosecution evidence.
iii) If the police papers are provided to medical officer with a delay after completion of complaint in homicide incident, then the inference can be drawn that the complaint was drafted much after the canvassed time and during this intervening period, the attendance of eye-witnesses was procured, who otherwise were not present at the crime scene.
iv) If an eye-witness gives evasive replies to material questions or expresses ignorance regarding them, the testimony of such a witness is to be discarded in accordance with doctrine of abundant caution.
v) If the eye-witnesses are closely related to the victim of murderous assault and they do not make any effort to save his life, then such conduct gives vent to the defence version that none of the eye-witnesses was in attendance by the time deceased was beset by the assassins.
vi) Provision of 25.2(3) of the Police Rules 1934 requires that it is the duty of an investigating officer to find out the actual facts of the case and to arrest the real offender(s) and he shall not commit himself prematurely to any view of the facts for or against any person.
vii) The conflict between medical and ocular account is always considered a factor detrimental to the case of prosecution, sufficient enough for discarding the evidence of eye-witnesses.

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25. **Lahore High Court**
Muhammad Atif v. Election Commission of Pakistan & others
Writ Petition No. 23249 of 2024
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2024LHC2248.pdf

Facts: Through this Writ Petition, the petitioner challenged the order passed by a bench of Election Commission of Pakistan on an application for recounting of votes under Section 95 of the Election Act, 2017 filed by one of the respondent whereby, after consolidation of results by the Returning Officer, an inquiry committee was constituted and the notification of returned candidate (the petitioner) was suspended till the decision of the matter.

Issues: i) Whether ECP has the jurisdiction to enter upon the controversy and render a decision regarding recounting of votes after consolidation of results by the Returning Officer?

ii) Whether ECP can pass an interim order for setting up of an enquiry committee and suspend the notification of returned candidate?

iii) Whether High Court can interfere in the order of ECP while the election tribunals have been set up?

Analysis: i) It is clear that the holding of this Court was that the recount of ballot papers and the power to be exercised by ECP has to be done before conclusion of the consolidation proceedings. Further that if the exercise of power is not completed as contemplated by sub-section (6) of section 95, ECP cannot thereafter proceed to exercise such power on the misplaced notion that it can do so by invoking the provisions of section 8 of the 2017 Act or any other provision in law or the Constitution…there are no inherent powers inhering in ECP to rectify a purported injustice committed during course of election and its powers are circumscribed by the provisions of section 95(6) of the 2017 Act… It is evident that ECP proceeded to exercise its powers under Section 95(6) in contravention of clear intent reflected in the said provision by the legislature. The crucial words are **"before conclusion of the consolidation proceedings".** The consolidation proceedings are required to be concluded by the Returning Officer within five days after the polling day in the case of elections to a Provincial Assembly. This is the cutoff date prescribed by law for the consolidation proceedings to be completed and this includes the processes under sub-sections (5) or (6).

ii) There is no contention that the Returning Officer had rejected the application for recount of votes. It was thereafter left to be decided by ECP whether to direct the Returning Officer to recount the votes or not. ECP on its part delayed the matter and initiated inquiries into the entire process of election which, in my opinion, was not the mandate of sub-section (6) of section 95 of the 2017 Act. When an application was made to ECP it merely had to see whether the Returning Officer had proceeded in accordance with law while refusing recount of votes under the powers conferred by subsection (5) of section 95 and no more. In any case, it could only have done so prior to completion of the consolidation proceedings on 09.02.2024 by the Returning Officer… While issuing an order for setting up of an inquiry committee ECP suspended the notification to be issued in favour of the petitioner. It is indeed unclear whether ECP could have passed an interim order of this nature as this would be tantamount to suspending the statutory provisions of subsection (10) of section 95 and section 98 which cannot be countenanced. In a nub, these provisions require that "on receipt of Final Consolidated Result…..the Commission shall, within fourteen days from the date of the poll, publish in the official gazette the name of the contesting candidate who has received the highest number of votes and stands elected". Thus it does not hinge on the whims of ECP but the crucial document is the Final Consolidated Result upon which the ECP has no discretion left in the matter.

iii) …argue that this Court cannot interfere at this stage while the election tribunals have been set up. Suffice to say that this aspect was ignored by ECP by prolonging the proceedings unduly as it can be seen that the hearing was conducted in the

matter on 12.3.2024 and the impugned order was passed thereafter on 01.04.2024. Moreover, the challenge in this petition is to an order passed by ECP whose sufficiency in law has to be seen by this Court in the present petition.

Conclusion: i) ECP does not have jurisdiction to pass an order regarding recounting of votes "after consolidation of results" by Returning Officer. It can do the same only "before conclusion of the consolidation proceedings"
ii) See above analysis No. ii.
iii) When the sufficiency in law of an order of ECP is in question, High court can interfere even when the election tribunals have been set up.

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26. **Lahore High Court**
Ch. Rizwan Ali Raa v. Government of Punjab & others
W.P. No.30823/2024
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2024LHC2344.pdf

Facts: The Petitioner challenged a scheme sought to be launched by the Government of Punjab to provide motorcycles to the students. Under the scheme the proposal is to provide 23000 bikes to the students of which 19000 would be petrol bikes. This raised concerns regarding environment pollution and adverse impact on the environment by induction of a large number of motorcycles in the traffic pattern of Punjab.

Issue: Whether any project or scheme which is likely to cause adverse environmental effect can be launched prior to Environmental Impact Assessment and its approval by the Provincial Agency under the Punjab Environmental Protection Act, 1997?

Analysis: The provisions set out above [S.12 of the Punjab Environmental Protection Act, 1997] is couched in mandatory terms and prohibits any project to commence unless an environmental impact assessment has been filed with the Provincial Agency whose approval has been obtained in this regard. This, *a fortiori*, applies to a scheme or undertaking by the Government and is of the essence of a responsible Government. This has admittedly not been done by the Transport Department while formulating the scheme and obtaining its approval from the Government. The Secretary present in the Court does not dispute the applicability of the Act, 1997 under these circumstances. Finally, section 19 makes it an offence for any Government Agency to proceed with the implementation of the scheme without the approval of the Provincial Agency and the head of that Government Agency will be directly liable for being punished under the provisions of the Act, 1997. Therefore, it can be culled out from the above narration of the provisions of Act, 1997 that an Environmental Impact Assessment (EIA) as a *sine qua non* was to be submitted by the Transport Department with regard to the scheme to the Provincial Agency and an approval had to be obtained priorly before the scheme was formally launched. This can still be done by the Transport Department which is under obligation to do so.

Conclusion: Any project or scheme which is likely to cause adverse environmental effect cannot be launched prior to Environmental Impact Assessment and its approval by the Provincial Agency under the Punjab Environmental Protection Act, 1997.

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27. **Lahore High Court**
Salman Akram Raja v. Election Commission of Pakistan
W.P No.28985 of 2024
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2024LHC2466.pdf

Facts: The question at the heart of these Constitutional Petitions critically interrogates the meaning of section 140 of the Elections Act, 2017.

Issues: i) Whether in matters of appointment of Election Tribunals under Section 140 of the Act, the opinion of a Chief Justice of a High Court shall have pre-eminence over a contrary view of ECP and ECP is bound to appoint Judges nominated by the Chief Justice?
ii) Whether ECP can require the Chief Justice to provide a panel of Judges to ECP for their appointment as Election Tribunals?
iii) Whether the territorial jurisdiction and areas to be assigned is the exclusive domain of the Chief Justice of a High Court?

Analysis: i) Section 140 requires unpacking in order to arrive at the true construction to be given to this provision and in particular sub-section (3). The appointment of Election Tribunals is a power conferred upon ECP by section 140 and there is no cavil with this argument. The arguments in this Court on behalf of ECP centered on the word "appoint" from which it was sought to be deduced by the learned counsel that the entire discretion to appoint an Election Tribunal would vest in ECP to the exclusion of all others and this must be read as conferring primacy in the matter on the acts of ECP and thus the Chief Justice Lahore High Court has misconstrued that the nominations so made must be notified and appointed. This argument is remarkably cramped and would have the effect of nullifying the effect of sub-section (3) of section 140 of the Act. In order to render a harmonious interpretation the entire section 140 will have to be read holistically.In my opinion, sub-section (3) refers to a stage prior to appointment of Election Tribunals by ECP and that stage contemplates the appointment of a sitting Judge as Election Tribunal in consultation with the Chief Justice of the High Court concerned. Therefore, the consultative process has to precede the appointment to be made by ECP. This brings us to the next question as to what precisely is meant by consultation with the Chief Justice of the High Court concerned.The word "consultation" has received judicial interpretation in the seminal case of Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahab-ul-Khairi and others v. Federation of Pakistan and others (PLD 1996 Supreme Court 324). It is presumed that the Parliament was aware of the interpretation put on the word 'consultation' by the superior courts and in particular

by the Supreme Court of Pakistan in Al-Jehad Trust. By now, the term 'consultation' has morphed into a term of art and use of this term has a definite and precise meaning which has to be attributed to it in the context of Al-Jehad Trust case. Not only that the Parliament is presumed to be aware of it but also ECP must have a fair idea of what is meant by the Parliament when it uses the term 'consultation' in any statutory instrument. This is also a canon of construction vouched by authority. (…) By way of historical facts, it may be stated that Articles 177 and 193 of the Constitution, were materially different prior to the amendments made through the Constitution (Eighteenth Amendment) Act, 2010. Priorly, the President appointed the Judges to the superior courts in consultation with the Chief Justice of Pakistan and the Governor of the Province. The issue fell for determination before the Supreme Court of Pakistan in Al-Jehad Trust as to whether there was in fact consultation between the President and the consultees and also what was the status of consultation and the views in consequence thereof of the Chief Justice of Pakistan with regard to the question of appointment.(…) It was held that the consultation has to be effective, meaningful and purposive. More importantly, the Supreme Court clearly stated that the opinion of the Chief Justice of Pakistan and the Chief Justice of a High Court as to the fitness and suitability of a candidate for being appointed as a Judge was entitled to be accepted in the absence of very sound reasons to be recorded in writing by the President/Executive. Moreover, the opinion of the Chief Justice could not be ignored and this was evident from the use of the word "consultation". This was held notwithstanding the fact that the power to appoint vested in the President and this aspect on which much emphasis was laid by learned counsel for ECP was squarely dealt with in Al-Jehad Trust while holding that though the Executive may have the last word and may issue Notification of appointment, but this had to give way to the interpretation regarding the word 'consultation' put by the Supreme Court and cannot ignore the opinion of the Chief Justice of Pakistan or the High Court as the case may be.(…) Learned counsel for ECP contended that this case was in the paradigm of appointment of Judges to the superior courts. This is an erroneous view of Al-Jehad Trust and the interpretation put on the word 'consultation' was intended to apply in all matters where the word was used in all future statutory instruments. Such a contention would offend the intention of the legislature as well while enacting sub-section (3) of section 140 of the Act while using the word 'consultation' which has become a well-worn term over the years since its exposition in Al-Jehad Trust. Likewise, ECP's view on the issue is a misdirection of law which feeds through the rest of the decision-making process.(…) Firstly, such Tribunals were held as courts exercising judicial functions. Secondly, the consultation with Chief Justice and its binding nature was tied in with the fundamental right of access to justice. Thirdly, sound reasons were given for conferring primacy to the Chief Justice's word. This precedent settles the cardinal feature of independence of judiciary in all such matters.(…) Learned counsel for ECP has drawn the attention of this Court to Articles 219 (c) and Article 222 (Proviso) of the Constitution). These Articles provided that:219. The 1 [Commission] shall be charged with the duty of-(c)

appointing Election Tribunals.(222) …"but no such law shall have the effect of taking away or abridging any of the powers of the Commissioner or the Election Commission under this Part.It was contended by learned counsel that no law can be made by the Parliament which will have the effect of taking away or abridging any of the powers of ECP. This is sought to be read with Article 219(c) which gives power to ECP to appoint Election Tribunals. There is no contention with the primary argument and the underlying purpose for which these two provisions have been provided in the Constitution. It is by now settled that appointment of Election Tribunals is conceded to ECP and one cannot mount a counter argument. But the appointment is again a power of the Executive and in many cases is a ministerial power and cannot be used to nullify the process which must precede the exercise of that power of appointment. This was precisely the case in Al- Jehad Trust and Riaz ul Haq where meaningful consultation was considered an essential condition of appointment and thereafter it was held that the President may appoint the nominations made as a result of consultation and in case there was a disagreement, the opinion of Chief Justice of Pakistan or the High Court concerned would have a binding effect. Doubtless, the Chief Justice of Pakistan or the Chief Justice of the High Court concerned in the matter of appointment of Judges of the High Court cannot be attributed the power to appoint a Judge which is a ministerial act to be accomplished by the Executive after the entire process has culminated. This is the construction to be put on the use of the word "appointing" in Article 219(c) of the Constitution. This argument also raises the inference as if the learned counsel for ECP invites this Court to hold that mention of the word 'consultation' in sub-section (3) of section 140 should be rendered meaningless and nugatory and the decision of ECP will prevail under any circumstances. This is a misconstruction of law and a fallacy which cannot be given credence. This aspect of the matter as to what constitutes appointment has also been dealt with in Al-Jehad Trust and applies on all fours in the present cases. For instance, see Article 193(1) which provides: "193(1) The Chief Justice and each of other Judges of a High Court shall be appointed by the President in accordance with Article 175A." Thus, the Chief Justice and Judges are to be appointed by the President (who has no role in the process) in accordance with Article 175A. Can it be argued by ECP that since the President appoints, so primacy must attach to the selection made by him? Clearly not. Such an argument is untenable. The term 'consultation' is a widely used term both in the Constitution as well as various laws. Article 235 of the Constitution requires that the President may impose a financial emergency after consultation with the Governors of the Provinces. In the present Article 175A clause 5 (iv) 2nd proviso requires that Chief Justice of Pakistan shall nominate a former Chief Justice or a former Judge of that Court in consultation with four Member Judges. Similarly, Article 182 authorizes the Chief Justice of Pakistan in consultation with the Judicial Commission for appointment of ad hoc Judges. Thus, the term has a wide ranging presence and has been construed in Al-Jehad Trust in the context of appointment of Judges to superior courts which gave an edge to the opinion of the Chief Justice of Pakistan and the Chief Justice of the High Court concerned in view of the exalted

position of the judiciary as envisaged in Islam as also in the light of several provisions of the Constitution which relate to the judiciary guaranteeing its independence. In an election petition it may well be that ECP is a party and many of its acts would be subjected to trial and decision by the Election Tribunals. The purpose of enacting sub-section (3) of section 140 of the Act clearly seems to refer the matter regarding nomination of Judges to an independent arbiter, that is, Chief Justice of the High Court concerned and while the ECP may engage in consultation with the Chief Justice of the High Court regarding matters relating to the number of Election Tribunals to be appointed yet must defer to the opinion of the Chief Justice in the matter relating to nomination of Judges for being appointed as Election Tribunals. This is not a power given to ECP under the law as it stands today. The law now obliges the Election Tribunals to decide the election petitions within 180 days. If the election petition is not finally decided within 180 days (section 148 of the Act) then consequences have been provided one of which is stated in clause 'd' of sub-section (6) of section 148: "if a serving Judge is the Election Tribunal, the Commission shall request the Chief Justice of the High Court that no judicial work other than election petitions should, to the extent practicable, be entrusted to him till the final disposal of the election petitions." The above provision confers a power on ECP to request the Chief Justice not to assign judicial work other than election petitions to a serving judge appointed as an Election Tribunal. Thus, not only that ECP will request the nomination of Judges to be appointed as Election Tribunals but shall also make a request to the Chief Justice of the High Court if the election petitions are not being decided expeditiously and within the time frame provided by law. In respect of assignment of words, the law itself provides dominance to the Chief Justice and merely a request can be made by ECP. This aspect has a close nexus with the unilateral act of ECP to assign areas of jurisdiction to different Election Tribunals. Plainly, the law does not permit the exercise of such power by ECP. (…) Another factor which compels this Court to hold that the opinion of the Chief Justice must prevail is that, to use an oft-quoted term, he is the master of roster for the High Courts, under the current dispensation. Judges are borrowed by ECP to act as Election Tribunals. Though the Chief Justice is first amongst equals in judicial work, his range of administrative powers is vast and exclusive. ECP cannot have the luxury of choice of Judges in a situation where LHC is inundated with cases with a huge backlog. The Chief Justice is the best person suited to take a decision regarding which Judges to spare by taking into account various considerations and factors within his peculiar knowledge. ECP cannot, by any stretch of imagination, insist on a particular Judge when the Chief Justice wants that Judge to clear a certain class of cases which he has the capacity to decide expeditiously. It must be borne in mind that Judges of this Court do not merely exercise jurisdiction under the Act but do so under different Federal and Provincial laws for which the Chief Justice decides to assign work. These are matters to which ECP has no access. Telling a chief Justice of a High Court to appoint this and that Judge as Election Tribunal is tantamount to usurpation of the administrative powers of a Chief Justice conferred by the Constitution and law.

This also impinges upon the right of access to justice enshrined in the Constitution. Further, if this were conceded to ECP, it would mean that a Chief Justice will be required to act on the direction of ECP. Such a result is unpalatable and unlawful. Let us take a hypothetical example. A situation may arise of a stalemate between ECP and a High Court in such a matter, and ECP appoints Election Tribunals at its discretion (as has been done in the instant case). Notwithstanding the appointment, the Chief Justice of a High Court may direct the office not to assign election petitions to the appointed Election Tribunals. What will the ECP do? Nothing, in my opinion! ECP has no power over the office of a High Court and cannot direct it to perform functions contrary to the directions of a Chief Justice. Indubitably, therefore, when consultation is provided in law, all other authorities must surrender to the opinion of a Chief Justice as the functions of a Chief Justice invoke a complicated balancing of a number of factors. (…) In matters of appointment of Election Tribunals under Section 140 of the Act, the opinion of a Chief Justice of a High Court shall have preeminence over a contrary view of ECP and ECP is bound to appoint Judges nominated by the Chief Justice.

ii) Since a stalemate had admittedly set in the consultation process, ECP took upon itself and assumed the power to assign areas to Election Tribunals while insisting upon a panel of Judges to be provided for their appointment as Election Tribunals. This puts paid to the argument of ECP that consultation is ongoing. In fact the parties have arrived at an impasse. The act of ECP in insisting upon a panel of Judges to be provided not only does not have a legal basis but also creates an unsavory situation. As the statutory wording makes clear, the only condition that the law prescribes is for consultation to be held and not that ECP can assume a dominant position to claim preeminence in the matter. It does not empower ECP to carve out procedures of its own choosing. This cannot be permitted to be read in section 140(3) and such a wide margin of judgment cannot be afforded to ECP. There is no reasonable and intelligible criteria on the basis of which ECP has selected two Judges out of six nominated by the Chief Justice and has refused to nominate the other four Judges as Election Tribunals. This would have been permissible had ECP conveyed its intention to appoint lesser Election Tribunals than the nine initially recommended for appointment and it had been conveyed to the Registrar Lahore High Court that this would constitute sufficient numbers to deal with and decide election petitions. On the contrary, ECP while appointing two Judges out of six nominated by the Chief Justice, went on to insist that a panel of Judges be provided for their appointment as Election Tribunals for the trial and disposal of the election petitions pertaining to National/ Provincial Assemblies constituencies of Rawalpindi and Bahawalpur Divisions. The clear implication was that four other Judges nominated by the Hon'ble Chief Justice did not find favour with ECP for reasons best known to ECP and so the insistence on a further panel of Honourable Judges from which ECP could pick and choose for being appointed as Election Tribunals. This is impermissible to ECP and cannot be countenanced. We must bear in mind that we are concerned with sitting Judge of LHC and ECP is not tasked with determining their fitness and suitability (as in case of Al-Jehad

Trust). Thus ECP has no power at all to pick and choose Judges out of a panel which suits its cause. This is not only offensive but strikes at the concept of judicial integrity and comity. It is egregious and harmful to independence of judiciary and is an expression of lack of trust in the discretion exercised by the Hon'ble Chief Justice. It needs to be clarified here that the position in Al- Jehad Trust that requires reasons to be given in case of dissent by the executive does not apply here for the simple reason that ECP is not competent to proffer any comments on the integrity of a sitting Judge. This is impermissible to ECP.(…) The letter dated 26.04.2024 by ECP is also held to be unlawful being beyond the powers of ECP to require the Chief Justice of LHC to provide a panel of Judges to ECP for their appointment as Election Tribunals.

iii) The second issue which arises in these petitions relates to the power of ECP to assign area of jurisdiction to the Election Tribunals. This purported power has absolutely no basis and ECP while issuing the Notifications has not relied upon any statutory provision in the Act under which ECP can assign areas of jurisdiction. This is quintessentially a power vesting in the Chief Justice of a High Court and relates to his administrative powers of assigning cases to the Judges of that Court including settling the roster of hearing by the Judges. This cannot be seized by a unilateral act and without any lawful basis. Therefore, the act of ECP in assigning areas to Election Tribunals for the trial and disposal of election petitions is ultra vires and without lawful authority. (…) The Notification of 26.04.2024 to the extent that it assigns areas of jurisdiction to Election Tribunals is set aside. The territorial jurisdiction and areas to be assigned is the exclusive domain of the Chief Justice of a High Court.

Conclusions: i) In matters of appointment of Election Tribunals under Section 140 of the Act, the opinion of a Chief Justice of a High Court shall have preeminence over a contrary view of ECP and ECP is bound to appoint Judges nominated by the Chief Justice.

ii) It is beyond the powers of ECP to require the Chief Justice to provide a panel of Judges to ECP for their appointment as Election Tribunals.

iii) The territorial jurisdiction and areas to be assigned is the exclusive domain of the Chief Justice of a High Court.

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28. **Lahore High Court**
National Command Authority Foundation (NCAF) through its Authorized Officer Col (R) Muhammad Sabir v. Sheikh Sarosh Iftikhar and others
F.A.O. No.90 of 2023
Mr. Justice MirzaViqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC2365.pdf

Facts: In connection with agreement of parties, the appellant, while invoking clause 20 thereof terminated the contract. In this backdrop, the respondent moved an application under Section 20 of the Arbitration Act, 1940 for appointment of arbitrator through the intervention of the court. Now, this single judgment shall govern the instant appeal as well as Civil Revision, as both are arising from a

common order, whereby Civil Judge allowed petition under Section 20 of the Arbitration Act, 1940 and also accepted application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure moved by one of the respondents.

Issues: i) Whether it is obligatory to demonstrate some sufficient cause to persuade the court not to proceed in terms of Section 20 of Arbitration Act, 1940?
ii) Whether the termination of contract by itself renders the arbitration clause redundant?

Analysis: i) Section 20 of the Arbitration Act, 1940 gives a choice to any parties to an arbitration agreement that where a difference has arisen regarding agreement then, before the institution of any suit, they may apply to a competent Court that the agreement be filed in court. Further, Section 20 (4) of the Act ibid ordains that there should be some extraordinary circumstances in which the court desist from passing an order that the agreement to be filed and matter should be referred to the arbitrator(s). The terms "sufficient cause" used in Section 20 (4) of the Act ibid is alike and akin to the phrase "where it does not disclose a cause of action" used in Rule 11(a) of Order VII of the Civil Procedure Code, 1908 which is one of the grounds for rejection of plaint recognized by the said provision of law. The proceedings in terms of Section 20 of the Act ibid are though in the nature of proceedings in a suit, but in strict sense it is not a suit. When such application is moved, a show cause notice is to be issued to all the parties to the agreement requiring them to explain why agreement should not be filed. If sufficient cause is not shown to the contrary, the agreement is ordered to be filed.
ii) In case of termination of contract by one of the parties, matter can still be referred to the arbitrator(s) by the court in terms of Section 20 of the Arbitration Act, 1940.

Conclusion: i) It is obligatory to demonstrate some sufficient cause to persuade the court not to proceed in terms of Section 20 of Arbitration Act, 1940.
ii)The termination of contract by itself does not render the arbitration clause redundant.

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29. **Lahore High Court**
Commissioner Inland Revenue v. Zia-ur-Rehman
Income Tax Reference No. 36 of 2022
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2024LHC2543.pdf

Facts: The respondent/taxpayer filed his return for year 2017 and subsequently revised his return which is deemed return. The case of respondent was selected for audit u/s 214C of Income Tax Return, 2001 regarding which intimation was sent to him. The respondent's representative submitted power of attorney but failed to produce requisite document and show cause was issued to respondent u/s 122(4) of ITO, 2001 and assessment was amended. The respondent filed appeal before the Commissioner Inland Revenue (Appeals) which was disposed of resulting in

remand of the case with the direction to provide proper opportunity of hearing and examine the documents and explanation of the respondent with respect to the Bank credit entries. The respondent, being aggrieved, preferred second appeal before the Tribunal which was allowed. Hence, this reference by department.

Issues: i) Whether substituted sub-section (6) of Section 177 of the Income Tax Ordinance is applicable retrospectively or to case where audit was yet to be completed?
ii) What are requirements for exercise of authority to amend the assessment under newly inserted sub-section (6) of Section 177 of the Income Tax Ordinance?
iii) Whether newly inserted sub-section (6) of Section 177 of the Income Tax Ordinance is applicable retrospectively or to case where audit was yet to be completed?
iv) Whether any change in substantive law which adversely affects vested rights of the parties should always have prospective or retrospective application?
v) Whether a statutory provision can be termed to have been given retrospective effect merely because a part of the requisites for its action is drawn from a time antecedent?

Analysis: i) There is no cavil that the aforementioned provisions became effective from 01.07.2019. Sub-section (6) ibid makes it mandatory for the Commissioner, upon completion of the audit, to obtain taxpayer's explanation on all the issues raised in the audit and after that issue an audit report containing audit observations and findings. There is nothing in the language of the said provision which suggests retrospective application of the same. It means that cases where vested rights had accrued or transaction had been closed because of completion of audit prior to the aforementioned amendment, the requirements stipulated through substituted sub-section (6) cannot be pressed into service. There is, however, nothing in the language of sub-section (6) ibid which restricts application of the said provision to cases where audit was pending completion or still underway on 01.07.2019, which is the case here. Likewise, there is nothing in the text of the said provision that restricts its application to the cases selected for audit after any particular tax year. Indeed, the date of selection for audit hardly provides any basis for regulating applicability of the amended sub-section (6) of Section 177 of the Ordinance, which clearly would apply to all cases where audit was yet to be completed after the aforementioned enactment.

ii) Sub-section (6A) of Section 177 of the Ordinance empowers the Commissioner to amend the assessment under sub-section (1) or subsection (4) of Section 122 of the Ordinance, after issuing the audit report and providing an opportunity of being heard to the taxpayer under subsection (9) of Section 122 ibid. Issuance of the audit report is a precondition or sine qua non for the exercise of authority to amend the assessment under sub-section (6A) ibid and the requirement to grant opportunity of hearing is meant to ensure satisfaction of the due process requirement guaranteed under Article 10A of the Constitution of Islamic Republic of Pakistan, 1973.

iii) There is nothing in the language of the said provision which suggests

retrospective application of sub-section (6A) of Section 177 of the Ordinance. It means that cases where audit exercise was already completed and proceedings to amend the assessment were completed or initiated with the issuance of show cause notice prior to the aforementioned legislative enactment, sub-section (6A) ibid cannot arguably be pressed into service. There is, however, nothing in the language of sub-section (6A) ibid which restricts application of the said provision to cases where audit was pending completion or still underway on 01.07.2019, which is the case here as manifest from the facts narrated herein above. Again, there is nothing in the text of the said provision that restricts its application to the cases selected for audit after any particular tax year. Indeed, the date of selection for audit hardly provides any basis for regulating applicability of the amended sub-section (6A) of Section 177 of the Ordinance, which clearly would apply to all cases where audit was to be completed after the aforementioned enactment and proceedings for the amendment of assessment were yet to commence.

iv) It is trite law that in the absence of any stipulation to the contrary, any change in substantive law which adversely affects vested rights of the parties should always have prospective application. It is equally well settled that the Courts lean against giving retrospective operation where the same would prejudicially affect vested rights or past transactions. A prospective statute operates from date of its enactment conferring new rights whereas a retrospective statute, on the other, operates backwards and takes away or impairs vested rights acquired under existing laws.

v) A statutory provision cannot be termed to have been given retrospective effect merely because a part of the requisites for its action is drawn from a time antecedent to its passing or operation thereof is based upon the status that arose earlier.

Conclusion: i) There is nothing in the language of sub-section 6 of Section 177 of the Income Tax Ordinance which restricts application of the said provision to cases where audit was pending completion or still underway on 01.07.2019. There is nothing in the language of the said provision which suggests retrospective application of the same.

ii) Issuance of the audit report is a precondition or sine qua non for the exercise of authority to amend the assessment under sub-section (6A) ibid and also the providing an opportunity of being heard to the taxpayer under subsection (9) of Section 122 of ITO, 2001 is necessary.

iii) There is nothing in the language of the said provision which suggests retrospective application of sub-section (6A) of Section 177 of the Ordinance. There is nothing in the language of sub-section (6A) ibid which restricts application of the said provision to cases where audit was pending completion or still underway on 01.07.2019

iv) Any change in substantive law which adversely affects vested rights of the parties should always have prospective application.

v) See above analysis No. v.

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30. **Lahore High Court**
Mst. Najma Bibi v. S.H.O., etc.
Crl.Misc.No.27821-H/24

Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2024LHC2299.pdf

Facts: Through this Petition under Section 491 Cr.P.C. the petitioner, seeks recovery of her daughter in law, from the illegal and unlawful confinement of respondents.

Issues: i) Whether there is need for a supplementary statement if the co-accused persons had already disclosed the involvement of other accused in the case?
ii) Whether a request for physical or judicial remand can be entertained/considered by the Area Magistrate or the court without the opinion of relevant Prosecutor?
iii) Whether the liberty and dignity of a person considered sacrosanct and placed atop the fundamental human rights pedestal, and how does Islamic teaching, as well as Article 9 of the Constitution, protect these rights against arbitrary arrest and detention?
vi) Whether admission of an accused before the police admissible as evidence against a co-accused?
v) Whether any statement or further statement of the first informant recorded during the police investigation can be equated with the FIR or read as part of it?
vi) Whether a complainant's supplementary statement, which involves particular accused without disclosing the source of information, be considered valid? And what precautions should the investigating officer take while recording such a statement?
vii) What is imperative for the Area Magistrate or the Court while granting physical or judicial remand particularly when supplementary statement of the complainant does not include the source of information regarding the involvement of an accused?

Analysis: i) This stance of the SHO is self-contradictory, if the co-accused made disclosure qua involvement of the detenue in the occurrence then there should not be any need for the supplementary statement of the complainant and the Investigating Officer was required to proceed further there and then in the light of alleged disclosure but he remained dormant and then after almost seven days of alleged disclosure recorded the supplementary statement of the complainant which sans source of information.
ii) Perusal of the remand paper shows that it was not forwarded by the concerned, Prosecutor but amazingly the learned Magistrate not only entertained the request of the Investigating Officer, without the same being forwarded by the Prosecutor but also send the alleged detenue to the judicial lock up in a mechanical manner without applying its judicial mind as to whether sufficient material was available against the alleged detenue to curtail her liberty or not. (…) Unfortunately, learned Magistrate Section-30, Daska has also not applied its judicial mind and acceded the request of judicial remand of the alleged detenue, which was even not forwarded by the concerned Prosecutor, resulting into grave miscarriage of justice. (…) The request of the Investigating Officer for physical/judicial remand of such accused, must have been accompanied with the opinion of the concerned Prosecutor qua sufficiency of the material against him. (…) Any request sans of the opinion of the

concerned Prosecutor shall not be entertained by the Area Magistrate or the Court as the case may be.

iii) The liberty and dignity of a person have always remained sacrosanct and have been placed atop the fundamental/ human rights pedestal. Islam has conferred upon human being the highest level of dignity amongst all of Allah's creation and secured and protected for them complete liberty within the prescribed limits. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Life bereft of liberty would be without honour and dignity and it would lose all significance and meaning and the life itself would not be worth living. This is why "liberty" is called the very quintessence of a civilized existence… Even Article 9 of the Constitution of Islamic Republic of Pakistan, 1973 guarantees that no person shall be deprived of life and liberty save in accordance with law. Protection against arbitrary arrest and detention is part of the right to liberty and fair trial. (…) Liberty of a person is a fundamental right enshrined in the Constitution and no one can be allowed to curtail the same on the basis of malafide and colourful exercise of authority.

iv) According to Article 38 of the Qanun-e-Shahadat Order, 1984, admission of an accused before police cannot be used as evidence against the co-accused. Even otherwise, it is well settled by now that confession of an accused before the police is inadmissible in evidence as far as admission of his own involvement in the alleged offence concerned, thus his statement vis-à-vis involvement of the co-accused is ordinarily twice removed from admissibility or reliability. I am of the considered view that the so-called disclosure of the co-accused, which even not produced before the Court, was insufficient to curtail the liberty of the alleged detenue, which is her inalienable right enshrined in the Constitution.

v) It is well settled by now that any statement or further statement of the first informant recorded during the investigation by police would neither be equated with First Information Report nor read as part of it. The Apex Court in a plethora of judgments observed that supplementary statement recorded subsequently to the FIR can be viewed as improvement.

vi) Supplementary statement recorded by the complainant for involving a particular accused in an incident, without disclosing the source of information, is not per se admissible piece of evidence, as such while recording such statement, the Investigation Officer should insist upon the complainant to disclose his source of information. (…) Investigating Officer should not cause arrest of the accused straightaway upon the supplementary statement of the complainant, rather he is duty bound to first collect incriminating piece of evidence in support of such statement and then proceed in accordance with law.

vii) The Area Magistrate or the Court, as the case may be, shall not grant physical/judicial remand in a mechanical manner, rather record its reasons for according such request. (…) If the supplementary statement of the complainant is bereft of source of information for involvement of an accused, the Area Magistrate or the Court as the case may be, may require the presence of the complainant before

dealing with such request.

Conclusions: i) If the co-accused made disclosure qua involvement of the other accused in the occurrence then there should not be any need for the supplementary statement of the complainant and the Investigating Officer was required to proceed further there and then in the light of alleged disclosure.
ii) Any request for physical or judicial remand that lacks the opinion of the concerned Prosecutor should not be entertained by the Area Magistrate or the Court.
iii) See above analysis No.iii.
iv) According to Article 38 of the Qanun-e-Shahadat Order, 1984, admission of an accused before police cannot be used as evidence against the co-accused. Even confession of an accused before the police is inadmissible in evidence as far as admission of his own involvement in the alleged offence.
v) Any statement or further statement of the first informant recorded during the investigation by police would neither be equated with First Information Report nor read as part of it.
vi) Supplementary statement recorded by the complainant for involving a particular accused in an incident, without disclosing the source of information, is not per se admissible piece of evidence, as such while recording such statement, the Investigation Officer should insist upon the complainant to disclose his source of information.
vii) The Area Magistrate or the Court shall not grant physical/judicial remand in a mechanical manner, rather record its reasons for according such request and if the supplementary statement of the complainant is bereft of source of information for involvement of an accused, the Area Magistrate or the Court, may require the presence of the complainant before dealing with such request.

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31. **Lahore High Court**
Shahida Bibi v. Inspector General of Police, Punjab, etc.
Crl.Misc.No.27670-H/2024
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2024LHC2287.pdf

Facts: Statedly, the detenue was discharged in case FIR No.1639/2023, in respect of offence U/S 392 PPC, whereas, he was granted post arrest bail in case FIR No.1048/24, in respect of an offence U/S 401 PPC. Soon after the release of the detenue from the jail on the same day, respondent No.4 again forcibly abducted the detenue and confined him at Police Station, with the active connivance of the SHO of said police station. Being aggrieved, the petitioner rushed to this Court by filing instant petition, seeking recovery and production of the detenue in the Court.

Issues: i) Is there any legal impediment to interrogate accused about all cases registered against him after his arrest, while he is in custody?
ii) Can the fundamental right of life and liberty as enshrined in the Constitution, be whimsically curtailed by the executive?

iii) Whether mere lodging of the crime report or supplementary statement or any person against whom investigation is conducted, can be construed as accused?
iv) Is prima facie evidence and adequate actionable material necessary to justify an arrest and establish reasonable connection to the crime complained of?
v) Is the investigation officer bound to make a written request to the Area Magistrate or the Court, as the case may be, if the arrest of accused is required in any case already registered against him but could not be made for any reason?

Analysis: i) It is settled proposition of law that when an accused is arrested in a case, there is no legal impediment for interrogating him with regard to all the cases registered against him since then. Section 167 Cr.P.C. does not visualize successive and repeated arrest of a person required in more than one cases. An accused required in more than one criminal cases when arrested will be deemed to have been arrested in all the cases registered against him. There is no legal bar for interrogating an accused person with regard to the allegations levelled against him in another case. It is rather desirable that when a person is required or accused in more than one cases or where more than one F.I.Rs. are registered against him is arrested and remanded to physical custody, then he should be interrogated about the allegations against him in all the cases. Instead of acting strictly in accordance with law, the police since long is following the illegal practice of showing the arrest of the person in one case and on the expiry of remand or after release on post arrest bail it again arrests him in another case. It is commonly known that in selected cases, police would arrest the accused on his release in the first case. It is nowhere stated in the Criminal Procedure Code and Police Rules that a person required in more than one case when arrested will be deemed to have been arrested in one case and he cannot be arrested simultaneously in more than one case.

ii) Life and liberty is a fundamental right enshrined in the Constitution of Islamic Republic of Pakistan, 1973 and the same cannot be allowed to be curtailed at the whims of the executive. Successive arrests of an accused in different cases one after another amounts to denial of his fundamental right and this Court being jealous guardian of the rights of a citizen cannot sit as a silent spectator and will step forward to curb such malpractice. It is well settled that where the action and proceedings are not bona fide and with ulterior motive to obtain information about an absconding accused and arrest after arrest is made involving same person in different blind reports lodged much earlier and no explanation is provided for such series of actions in seriatim one after the other, the High Court is empowered to afford protection to the citizen against involving frivolous and mala fide actions by imposing conditions on the erring authorities and agencies.

iii) It goes without saying that one of the cardinal principle of criminal law and jurisprudence is that an accused person is presumed to be innocent until proven guilty by the Court of law. However, on the one hand, soon after lodging of the crime report or supplementary statement, as the case may be, the complainant insisted upon the arrest of the accused and on the other hand, it has been observed by this Court that the Investigating Officer seems more eager to cause arrest of such accused, without determining the veracity of the allegations. It is well settled that

mere lodging of an information does not make a person an accused nor does a person against whom an investigation is being conducted by the police can strictly be called an accused. It is, therefore, desired that on receiving an information qua the involvement of a person in a cognizable offence, police should not straightway cause his arrest, rather first determine the veracity of the allegations and if after investigation, it arrived at a conclusion that sufficient incriminating material is available against the person complained against, then proceed further in accordance with law.

iv) Arrest of a person has to be justified not only by referring to prima facie evidence and adequate actionable material sufficiently connecting the person with the offence/crime complained of, but also by showing that in the given circumstances, there were no other less intrusive or restrictive means available. The power of arrest should not be deployed as a tool of oppression and harassment.

v) If arrest of the accused was required in any case already registered against him but could not be made for any reason, Investigating Officer is bound to make a written request to the Area Magistrate or the Court, as the case may be, explaining the reasons for such omission and seeking permission for the arrest of the accused.

Conclusion: i) When an accused is arrested in a case, there is no legal impediment for interrogating him with regard to all the cases registered against him since then.

ii) The fundamental right of life and liberty enshrined in the Constitution cannot be allowed to be curtailed at the whims of the executive.

iii) Mere lodging of crime report or supplementary statement does not make a person an accused nor does a person against whom an investigation is being conducted by the police can strictly be called an accused.

iv) Arrest of a person has to be justified not only by referring to prima facie evidence and adequate actionable material sufficiently connecting the person with the offence/crime complained of, but also by showing that in the given circumstances, there were no other less intrusive or restrictive means available.

v) The investigation officer bound to make a written request to the Area Magistrate or the Court, as the case may be, if the arrest of accused is required in any case already registered against him but could not be made for any reason.

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32. **Lahore High Court**
Muhammad Akram v. Additional Sessions Judge and another
Criminal Appeal No.460/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2024LHC2375.pdf

Facts: The Appellant and his co-accused were tried by the Additional Sessions Judge, who convicted them under section 9(c) of the CNSA and sentenced each of them and further directed that vehicle used in trafficking contraband shall be confiscated in favour of the State. The Appellant and his co-convicts filed separate appeals against their conviction and sentence, which were accepted by the High Court by a common judgment, and all of them were acquitted. However, the Division Bench did not pass any order regarding vehicle, due to which the Appellant filed an application with the Additional Sessions Judge, asking for possession of vehicle. The Judge

dismissed it by an order for not being maintainable because his court had become functus officio. This Appeal under section 48 of the CNSA is directed against that order.

Issues: i) Whether section 520 Cr.P.C. impose any restriction upon appellate and revisional courts to intervene in orders made under section 517, when no appeal or revision has been filed, or if it was filed but has been disposed of?
ii) Whether mere applicability of the procedure prescribed in the Code of Criminal Procedure to proceedings under the CNSA, 1997 does ipso facto make the remedies provided in the Code of Criminal Procedure applicable to the said statute?
iii) Whether the court's power to dispose of property under section 517(1) and section 520 Cr.P.C is discretionary?
iv) Whether a vehicle seized under the CNSA cases should always be released to its owner following an acquittal?

Analysis: i) There is no difficulty in understanding that if a case in which an order under sections 517, 518, or 519 Cr.P.C. has been passed is pending before a court of appeal or revision, that court has the authority to modify, annul, or alter such an order under section 520 Cr.P.C. However, a catena of rulings has held that when there is no ongoing case, an application can be made under section 520 Cr.P.C. to the court to which appeals or revisions ordinarily lie from the court that passed the order under sections 517, 518, or 519 Cr.P.C. There was some conflict of judicial opinion on this issue in the pre-partition era, but post-partition, the decisions of the courts in Pakistan are consistent that section 520 Cr.P.C. operates independently. In Sardara v. Boota (PLD 1950 Lahore 97), the question arose whether the Sessions Judge was competent to hear an appeal against the trial Magistrate‟s order regarding the disposal of the property involved in the case. It was argued that section 520 Cr.P.C. only conferred such power to the courts handling appeals or revisions. However, the High Court ruled that section 520 Cr.P.C. does not impose such a restriction and clarified that it allows appellate and revisional courts to intervene in orders made under section 517, even if the primary case has not yet reached them. It observed that the term "court of appeal" in section 520 Cr.P.C. is not strictly limited to a court before which an appeal is pending. Upon examining the facts and circumstances of the case before it, the High Court concluded that the Sessions Judge was competent under section 520 Cr.P.C., as the authority to which an appeal would have ordinarily been presented, to interfere with the order passed by the Magistrate. (…) Upon examination of the aforementioned legal provisions and precedents, several vital legal principles emerge. Firstly, section 517 Cr.P.C. imposes a duty on the court to make an order regarding the disposal of property under its custody, which continues until the property is disposed of, either through destruction or transfer out of the court‟s possession. While ideally, such orders should coincide with the judgment of the case, they may be issued later if not contemporaneous with the original ruling. Secondly, when a case with an order under section 517 Cr.P.C. is pending before a court of appeal or revision, that court

can annul, modify, or alter such an order under section 520 Cr.P.C. In instances where no such pending case exists, section 520 Cr.P.C. permits applications to the court where appeals or revisions typically lie from the court issuing the initial order under section 517 Cr.P.C. Importantly, when no appeal or revision has been filed, or if it was filed but has been disposed of, the court mentioned in section 520 Cr.P.C. can still exercise powers under that provision. Section 520 Cr.P.C. confers unique jurisdiction upon designated courts, enabling them to pass necessary orders to dispose of property. (…) Since sections 517 to 520 Cr.P.C. must be read subject to sections 47 and 48 of the CNSA as discussed above, an order made under section 33 of the CNSA can only be challenged under section 48. Should such an order be part of the primary order under appeal, the appellate court, irrespective of the powers granted by section 520 Cr.P.C., has the authority to amend, alter, or nullify it and may also issue further orders within its appellate jurisdiction. However, if the main case is not before the appellate court, it still has jurisdiction under section 520 Cr.P.C. to issue necessary orders.

ii) CNSA is a special law that aims to consolidate and amend laws relating to narcotic drugs2 and psychotropic substances3. Its primary objectives include controlling the production, processing, and trafficking of such drugs and substances and regulating the treatment and rehabilitation of narcotics addicts and related matters. Section 47 of the CNSA specifies that, unless otherwise provided in the Act, the procedural provisions of the Code of Criminal Procedure 1898, including those pertaining to the confirmation of a death sentence, shall apply to trials and appeals before a Special Court established under the CNSA. Section 48(1) dictates that appeals against the orders of Special Courts presided over by Sessions Judges or Additional Sessions Judges shall be lodged with the High Court and heard by a Bench of at least two Judges of that Court. Section 48(2) states that an appeal against the order of a Special Court headed by a Judicial Magistrate shall lie to a Special Court comprising a Sessions Judge or an Additional Sessions Judge. These provisions establish a comprehensive legal framework for the adjudication and appellate review of cases related to controlled narcotic substances, ensuring consistency and fairness in legal proceedings under the CNSA.The Supreme Court of Pakistan analyzed the above provisions of the CNSA in The State v. Fazeelat Bibi (PLD 2013 SC 361). It ruled that section 47 incorporates the procedural framework of the Code of Criminal Procedure into trials and appeals conducted under the Act without importing specific remedies from the Code to the Act. The Supreme Court underscored that the CNSA inherently provides its own set of remedies, clarifying that the mere applicability of the Code‟s procedure does not ipso facto extend the Code‟s remedies to the Act. (…) In view of the above, sections 517 to 520 Cr.P.C. must be read subject to sections 47 and 48 of the CNSA.

iii) The expressions “as it thinks fit” in section 517(1)4 and “orders that may be just” in section 520 Cr.P.C. signify that the court‟s power to dispose of property under these provisions is discretionary. Nonetheless, this discretion must be exercised in accordance with sound judicial principles. Generally, when no offence has been proved or appears to have been committed with regard to the property in

question, or if the property has not been used in any criminal activity, it should be restored to its rightful owner. Nevertheless, specific circumstances may necessitate a different course of action.

vi) The CNSA is lex specialis. Therefore, in cases thereunder, the articles connected with narcotics must be dealt with in accordance with sections 32 and 33 and the proviso to section 74 of the CNSA. A vehicle seized under the CNSA is not liable to be confiscated, and an individual can seek its release if he can establish that he is its lawful owner, that he is neither the accused nor an associate or a relative of the accused or an individual having any nexus with the accused. Conversely, the prosecution must demonstrate that the applicant knew the offence was being or was to be committed. Hence, it cannot be laid down as an absolute rule that a vehicle should always be released to its owner following an acquittal. Instead, each case should be decided on the basis of its peculiar facts and circumstances.

Conclusions: i) Section 520 Cr.P.C. does not impose any restriction as it allows appellate and revisional courts to intervene in orders made under section 517, even when no appeal or revision has been filed, or if it was filed but has been disposed of, the court mentioned in section 520 Cr.P.C. can still exercise powers under that provision.

ii) Section 47 of the CNSA,1997 only incorporates the procedural framework of the Code of Criminal Procedure into trials and appeals conducted under the said act without importing specific remedies because the CNSA,1997 inherently provides its own set of remedies.

iii) The expressions "as it thinks fit" in section 517(1) and "orders that may be just" in section 520 Cr.P.C. signify that the court's power to dispose of property under these provisions is discretionary.

iv) It is not an absolute rule that a vehicle should always be released to its owner following an acquittal in CNSA cases. Instead, each case should be decided on the basis of its peculiar facts and circumstances.

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33. **Lahore High Court**
Syed Zain Muntazar Mehdi v. Mst. Sara Naqvi, etc.
Writ Petition No.370 of 2024
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC2206.pdf

Facts: The Respondent No.1 instituted a suit for recovery of maintenance, dowry articles and delivery expenses before a Family Court which was decreed in favor of Respondent No.1 and upheld in appeal. The concurrent findings of fact had been assailed by the petitioner through this Constitutional petition.

Issues: i) Whether findings on fact recorded by acompetent court in exercise of lawful jurisdiction can be agitated by invoking writ jurisdiction under Article 199 of the Constitution?

ii) Which factors should be considered by a Family Court while fixing the quantum

of maintenance allowance of minors?
iii) Whether mere statement of a father that he is short of resources will discharge him of his obligation to pay maintenance allowance of his minor children?

Analysis: i) It is an established principle that findings on fact recorded by a competent court in exercise of lawful jurisdiction cannot be agitated by invoking writ jurisdiction under Article 199 of the Constitution unless the same suffer from any legal infirmity, jurisdictional error or perversity causing serious miscarriage of justice.
ii) A father is obligated to maintain his children and a reasonable standard must be assumed for determining quantum of their maintenance allowance. It goes without saying that the court while considering the quantum of maintenance will take into consideration the fundamentals of the minors education, status, general expenses. The court must also take into consideration reasonable probability of obtaining education and the ability to take care of the minors in a stable, safe and healthy environment. Without due consideration of all these factors, the court cannot conclude positively the quantum of maintenance… Quantum of maintenance requires due consideration of all factors on the basis of which the court can determine the actual need of the minor. In this regard, it is important for the court to keep in consideration the expenses incurred or likely to be incurred on the minors.
iii) …merely stating that he is short of resources will not discharge him of his obligation. The basic objective for determining maintenance is to ensure that in all probability the minors are maintained by the father in dignified manner with reasonable comfort and that the mother of the child is not left to bear the burden of taking care of the minors…Yet for the purpose of maintenance it is the obligation of the father to fulfill needs of his kids.

Conclusion: i) The findings on fact recorded by a competent court in exercise of lawful jurisdiction cannot be agitated by invoking writ jurisdiction under Article 199 of the Constitution unless the same suffer from any legal infirmity, jurisdictional error or perversity causing serious miscarriage of justice.
ii) Quantum of maintenance requires due consideration of all factors on the basis of which the court can determine the actual need of the minor including the expenses incurred or likely to be incurred on the minors.
iii) Mere statement of a father that he is short of resources will not discharge him of his obligation to pay maintenance allowance of his minor children.

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34. **Lahore High Court**
Strategic Plans Division and another v. Punjab Revenue Authority and others
Writ Petition No. 3973 of 2023
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC2525.pdf

Facts: The Petitioners in the instant petition and in connected Petitions have impugned show cause notices of different dates issued by Respondent/Punjab Revenue

Authority under the provisions of the Punjab Sales Tax on Services Act, 2012, whereby levy of provincial sales tax on the services have been imposed.

Issues: i) When the Court may exercise constitutional jurisdiction under Article 199 of the Constitution of Pakistan 1973 in writ challenging a show-cause notice?
ii) What would be fate of the show-cause notice served upon taxpayer without specifically stating the allegations and the grounds on which the said allegations are based?
iii) What are the benefits of mediation?
iv) What is the scope of mediation with regard to a show-cause notice issued under the Punjab Sales Tax on Services Act, 2012?

Analysis: i) The settled rule is that no writ lies against a show-cause notice. The only two exceptions to this rule are that when the Court is satisfied that the show-cause notice is totally non est. i.e. want of jurisdiction of the issuing authority, and that show-cause notice is issued malafidely.
ii) A show- cause notice served upon a taxpayer must encompass all essential facts and clearly outline the alleged actions or inaction by the taxpayer that breached the law, facilitating a substantial response from the tax payer. If specific allegation is not presented to the taxpayer in show-cause notice, denying him the opportunity to respond, any judgment on that allegation would violate the right to due process and a fair trial, contravening Articles 4 and 10-A of the Constitution of Islamic Republic of Pakistan, 1973.
iii) Mediation, a form of alternative dispute resolution, is praised for its efficiency, cost-effectiveness and ability to foster amicable settlements. Unlike court proceedings, mediation is a more informal and flexible approach, fostering open communication and creative problem solving. One of the key advantages of mediation is its cost-effectiveness compared to court proceedings and it also tends to be a faster method of resolution. Flexibility of mediation allows for a more personalized and tailored resolution to the specific needs and concerns of the parties involved.
iv) The Preamble of the Punjab Sales Tax on Services Act, 2012 lays strong emphasis to regulate the matters relating to taxation system, progressive & efficient tax administration management, to assist taxpayer and to promote compliance of fiscal laws. Section 5 (1) of the Act ibid states functions of the Punjab Revenue Authority as that the Authority shall exercise such powers and perform such functions as are necessary to achieve the purposes of this Act; Section 5 (2) (o) of the Act ibid states that the Authority shall have powers to set up mechanism and processes for remedying the grievances and complaints of the tax payers; Section 5 (2) (q) of the Act ibid states that the Authority shall have powers to practice transparency and public participation as a norm for all its processes and policies. The mechanism of alternate dispute resolution has also been provided under Section 69 of the Act ibid.

Conclusion: i) The Court may exercise its constitutional jurisdiction in writ challenging the

show-cause notice if it is found that the show-cause notice is totally non est i.e., want of jurisdiction of the issuing authority or same has been issued malafidely merely to harass the subject.

ii) Unless the allegations and the grounds on which the said allegations are based are specifically stated in the show- cause notice served to the taxpayer, the entire process becomes futile and legally untenable.

iii) Mediation not only saves time and money of parties, but it also reduces load of work in the courts as well as it is a most updated way on resolutions based on the "divine culture of Peace".

iv) Matters regarding a show-cause notice issued under the Punjab Sales Tax on Services Act, 2012, can be referred for mediation.

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35. **Lahore High Court**
Muhammad Riasat Ali v. The State
Objection Case, Diary No. 68328
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2024LHC2316.pdf

Facts: A case was registered against the petitioner under Section: 462-J PPC at Police Station: F.I.A., Circle, Gujrat wherein an application for post arrest bail was filed by the petitioner in the case before Sessions Courts, Gujrat, which was entrusted to the Court of learned Addl. Sessions Judge, Gujrat and was dismissed as withdrawn due to territorial jurisdiction. Then petitioner filed application for post arrest bail in the case in the Court of Additional Sessions Judge, Phalia, which was ordered to be returned due to territorial jurisdiction. Hence, this Petition.

Issues: i) What is the status of the FIA and whether any special court is constituted under FIA Act, 1974 for trial of the offences mentioned in the Schedule of the Act ibid?

ii) Which court is competent in terms of territorial Jurisdiction to entertain and decide the cases falling in the schedule of FIA Act 1974?

iii) Whether the place, where case regarding electricity offences has been registered, will decide the jurisdiction for the purpose of trial of the case or it would be the place of occurrence?

iv) Which Court is competent to take cognizance and conduct trial of the case with respect to offences relating to electricity contained in Chapter XVII-B of Pakistan Penal Code?

v) When the question with respect to taking cognizance and conducting trial between the courts of two districts arises, who will decide the competency of the court in terms of jurisdiction?

Analysis: i) The Federal Investigation Agency was established by way of the Federal Investigation Agency Act, 1974 and as per definition contained in Section: 2 (a) of the Act (*ibid*), "Agency" means the Federal Investigation Agency constituted under Section: 3, furthermore, as per Section: 3 (1) of the Act (*ibid),* the Federal Government may constitute an Agency to be called "the Federal Investigation

Agency" for inquiry into, and investigation of the offences specified in the Schedule;… Perusal of Section: 3 of the Act *(ibid)* read with preamble clearly show that Federal Investigation Agency has only been established for the purpose of investigation of and inquiring into the offences specified in the schedule. So, it is crystal clear that Federal Investigation Agency is only an "Investigating Agency" and the Federal Investigation Agency Act, 1974 only deals with investigation of and inquiring into the offences mentioned in the schedule and it is nowhere mentioned in said act that if any offence has been included in the schedule of said act, then any special Court will be established under said act for the purpose of taking cognizance and conducting trial of the case regarding said offence. Perusal of the schedule of the "Act" reveals that offences mentioned in various penal statues have been included in the same including from Pakistan Penal Code. So, when in the Federal Investigation Agency Act, 1974, it has not been mentioned that the offences included in the schedule will be tried by any Court established under said Act.

ii) In spite of the inclusion of offence in the schedule of said Act, for the purpose of jurisdiction with respect to taking cognizance of the offence and trial of the case regarding said offence, the parent statute containing said offence will hold the field i.e. the Court established for taking cognizance and conducting trial of the case regarding said offence provided in its parent statute will take cognizance of the offence and conduct trial of the case e.g. offences mentioned in the Emigration Ordinance, 1979 are also included in the schedule of the Act (*ibid*) however same are tried by the Special Court established under Section: 24 of the Emigration Ordinance, 1979, some offences punishable under the Anti-Terrorism Act, 1997 are included in the schedule of the "Act" (*ibid*) but same are tried by Anti-Terrorism Court and of course the offences mentioned in Pakistan Penal Code, which have been included in the schedule of the Act (*ibid),* will be tried by the Court established under the Code of Criminal Procedure, 1898.

iii) Answer of this question is available in Section: 177 of Cr.P.C., which clearly shows that every offence shall ordinary be inquired in and tried by a Court within the local limits of whose jurisdiction it was committed.

iv). Section: 462-G (a) PPC clearly shows that the "Court" means the Court of Session designated as Electricity Utilities Court empowered to take cognizance of an offence under this Chapter… Furthermore, it has been clearly mentioned in Column No.8 of Schedule-II of Cr.P.C. that said offences are triable by the Court of Session designated as Electricity Utilities Court… Therefore, the Court of Session designated as Electricity Utilities Court under Section: 462-G (a) PPC would be competent to take cognizance of the offences and conduct trial of the cases regarding said offences. It is also relevant to mention here that this Court *vide* notification bearing No.325/JOB(I)/VI.F.6 dated: 25.10.2019 has already authorized all the District and Sessions Judges in the Punjab to hear and dispose of all such cases falling under Section: 462-G (a) of Criminal Law (Amendments) Act, 2016 with retrospective effect from 01.02.2016 and they have been further authorized to nominate one or two Additional District and Sessions Judges for said

purpose till the establishment/constitution of regular new Electricity Utility Courts.
v) When there will be any doubt regarding jurisdiction to inquire into or try any offence, then "High Court" under Section: 185 (1) Cr.P.C. will decide that which Court will inquire into or try the offence;

Conclusion: i) Federal Investigation Agency is only an "Investigating Agency" and the Federal Investigation Agency Act, 1974 only deals with investigation of and inquiring into the offences mentioned in the schedule and no special court has been created under the Act ibid for trial of the offences included in it schedule.
ii) In spite of inclusion of any offence in the schedule of F.I.A. Act, 1974, Court established under the parent statute of said offence will conduct trial of the case.
iii) The Court in whose territorial jurisdiction place of occurrence is situated, would conduct trial of the case;
iv) See above analysis No. iii.
v) When question with respect to taking cognizance and conducting trial of the case between Courts of two districts arises, then it shall be decided by the High Court.

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36. **Lahore High Court**
Dr. Omer Chughtai, etc. v. Province of the Punjab, etc.
W.P No.2863/2024
Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2024LHC2418.pdf

Facts: This Constitutional Petition is directed against order, whereby Presiding Officer District Consumer Court had dismissed the application preferred by the petitioners seeking rejection/return of complaint, brought by respondent No.3. Petitioners plead that respondent No.2, exercising powers under the provisions of Punjab Consumer Protection Act, 2005, lacks jurisdiction to hear, entertain and adjudicate the complaint and in fact jurisdiction to inquire into allegations of maladministration, malpractices and alleged failure on the part of the Healthcare Service Provider exclusively vests in the Healthcare Commission under the provisions of Punjab Healthcare Commission Act, 2010.

Issues: i) Whether Section 29 of the Punjab Healthcare Commission Act, 2010 restrict a consumer from seeking damages for faulty and defective services from a healthcare provider?
ii) Can consumers directly seek damages through Consumer Court or Civil Court without the Healthcare Commission acting as a gatekeeper, or is the Commission required by the 2010 Act to first decide and approve claims of malpractice or maladministration before a consumer can file a claim for damages?
iii) What are the distinctive jurisdictional domains of the Commission and the Consumer Court, particularly in the context of imposing penalties versus awarding damages?

Analysis: i) For the purposes of this case, complaint filed by respondent No.3 is not seeking imposition of penalty for any alleged offence committed by the Healthcare Services

provider but damages for faulty and defective services. Services rendered being the licensee and services rendered towards the hirer or consumer are different and this distinction sheds light on the distinctiveness of the enactments and scope of powers defined therein. A consumer can file a claim of damages before the Consumer Court and simultaneously seek indulgence of the regulator/ licensor for action against licensee. Section 29 of Act 2010 has to be construed in the context of the authority of the Commission, which provision of law cannot be employed to restrict or discourage claim of damages.

ii) Choices of the hirer of services cannot be limited for seeking penalty only but evidently the option of subjecting service provider to contractual or tortuous damages is otherwise available before the Consumer Court or the Civil Court, depending upon the facts of the case. These two streams of remedies manifest intent of the legislature and address the purpose/objective of each of the enactment. (…) Learned counsel for petitioners failed to convince that how damages could be granted by the Commission under the Act 2010. Argument that no claim of damages could be filed unless allegation of maladministration or malpractice is adjudicated upon and endorsed by the Commission is misconceived. Role of the Commission to act as gatekeeper for determining the existence and pursuit of damages is mere figment of imagination, and not conceived by the provisions of Act 2010. (…) It is evident that in wake of allegations of maladministration or malpractice by the Health service provider, the Commission and not the Consumer Court has the jurisdiction, to impose penalty or pass other consequential orders, which per se excludes claim of damages from the jurisdictional domain of the Commission.

iii) It is evident that learned author Judge-in-Chambers provided requisite explanation, observing that claim of damages is distinguishable from the power to impose penalty, jurisdiction otherwise extended to the Commission under the law. Yes, as far as the question of imposition of penalty by the regulator, Commissions may claim exclusivity to the extent thereof. The ratio settled in the case of Dr. Muhammad Asif Osawala (supra) also provides an insight into distinctive jurisdictional domain(s), respectively available to the Commission and Consumer Court, and scope thereof.

Conclusions: i) Section 29 of Punjab Healthcare Commission Act, 2010 does not restrict or discourage the consumer from claiming any damages for faulty and defective services from a healthcare provider.

ii) The consumers can directly seek damages through the Consumer Court or Civil Court without the Commission acting as a gatekeeper. The Commission under the 2010 Act is not required to first adjudicate and endorse allegations of maladministration or malpractice before a consumer can file a claim for damages.

iii) The Commission and the Consumer Court operate within their respective domains, with the Commission focusing on regulatory enforcement through penalties and the Consumer Court addressing consumer grievances through damages.

37. **Lahore High Court**
Kaneez Fatima, etc. v. Senior Civil Judge, etc.
Writ Petition No.75322 of 2022
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC2358.pdf

Facts: Through this writ petition, the petitioners have assailed the order passed by learned Senior Civil Judge (Family Division), whereby the learned Judge has directed DNA analysis of minor in order to settle the claim between two parties about the paternity of such minor and that order was result of a direction by this Court passed in a Writ Petition.

Issues: i) Whether DNA results are corroborative or independent piece of evidence?
ii) Whether consent of parties is essential for DNA examination?
iii) What is physiognomy (qiyāfah)?

Analysis: i) Some of the jurists are of the view that DNA testing can provide almost certain results while other see its results as probabilistic, therefore such testing is always subject to statutory regulations. Even otherwise DNA results are only corroborative evidence which are to be accepted or rejected in the light of evidence of the parties and in case of dispute the expert can also be summoned to justify his opinion.
ii) It is clarified that consent of the parties is essential to decide claim of the parties with respect to paternity of the child. If the parties do not give consent for such DNA examination, then learned trial Court can draw adverse inference as per Article 129 (g) of Qanun-e-Shahadat Order, 1984 and shall proceed to decide the question of paternity on the basis of evidence produced by the parties.
iii) The article on "Islamic Law of Paternity and DNA Evidence" by Ayman Shabana throws light on such method. According to the tradition, it is a form of circumstantial evidence which is called physiognomy (qiyāfah), and was quite popular in the pre-Islamic Arabian culture. The word is derived from the Arabic root (qāfa), which stands for the act of following or tracing. It conveys the ability to follow marks on the ground, mainly in the desert. It also denotes the ability to examine resemblance in bodily and physical features for the purpose of confirming family relationships, especially in paternity disputes. Most jurists, justify the possibility of resort to physiognomy in contested cases by arguing that verification of lineage relationships is an important personal and social need. Sharīʿa seeks to provide means to enable establishment of paternity whenever possible even on the basis of probable evidence

Conclusion: i) DNA results are only corroborative evidence which is to be accepted or rejected in the light of evidence of the parties.
ii) Consent of parties is essential for DNA examination.
iii) See above analysis No. iii.

38. **Lahore High Court**

Imran Ahmad Khan Niazi v. The State, etc.
Crl. Misc. No. 46363-B/2023
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC2349.pdf

Facts: The Petitioner while invoking concurrent jurisdiction of High Court under Section 498 of the Code of Criminal Procedure 1898 sought pre-arrest bail in case FIR under sections 186, 353, 148, 149, 212, 506ii, 172, 173 & 174 PPC, on the ground that being ex-Prime Minister of Pakistan, he is facing serious security threats, therefore, cannot approach to the Court of Sessions without proper safety measures. The petitioner claimed that he being convicted prisoner is serving out his sentence in Jail, therefore, cannot appear before High Court nor can seek bail in absentia before the Sessions Court; therefore, it is well within the legal framework to ask for decision of his bail petition on merits by High Court.

Issues: i) What is wisdom of legislature for requiring the presence of the accused/petitioner before the Court for seeking pre-arrest bail?
ii) Can an accused who is on interim pre-arrest bail and is either present before the court or in custody in another case seek a decision on the merits of his petition?
iii) Whether Sessions Judge is authorized to grant 'an interim post-arrest bail' to the arrested accused if the offences are non-bailable when an accused is arrested in execution of a warrant of arrest issued from outside jurisdiction?

Analysis: i) By the statement of Learned Deputy Prosecutor General who is standing in representation of State/Government, the whereabouts of the petitioner has been brought into the notice of this Court, therefore, the very purpose of securing the presence of petitioner stands resolved because the wisdom of legislature for requiring the presence of petitioner before the Court for seeking pre-arrest bail of course is the assurance that accused being alive is within the country and has not absconded. Another reason for requiring presence of accused is providing of an opportunity to effect his arrest, though not in Court premises, after dismissal of his petition for pre-arrest bail. In a case reported as "SHAHZAIB and others Versus The STATE" (PLD 2021 Supreme Court 886), Supreme Court of Pakistan deprecated the practice of dismissing the petitions for pre-arrest bail due to non-prosecution when counsel seeks dispensing with the attendance of accused; Court must provide an opportunity to explain reasons of his non-appearance on the date fixed in the petition. Similar principle was already breathing in our jurisprudence as laid down by Full Bench of this Court in case reported as "SHABBIR AHMAD versus THE STATE" (PLD 1981 Lahore 599). Though presence of the accused is essential on all subsequent dates including on stage of confirmation of his bail yet Court is authorized to dispense with his attendance…
ii) The section 498-A Cr.P.C. commands three essentials for grant of bail; which are (i) accused must be in custody or (ii) present before the court, and (iii) a case must be registered. Though above section uses two expressions for grant of bail i.e., 'to release on bail' or ' to be admitted to bail', probably for grant of bail under

sections 497 & 498 of Cr.P.C. respectively, therefore, it is usually read that expression 'to release on bail' relates to custody and is used for post arrest bail while 'to be admitted to bail' connotes presence of accused in Court and is used for pre-arrest bail, yet it is a misconception which has already been clarified by the Supreme Court of Pakistan. The words "admitted to bail" are used both in sections 498 & 498-A Cr.P.C., therefore, Supreme Court of Pakistan while interpreting words "admitted to bail" used in section 498 of Cr.P.C… It is clear from the above dictum that an accused who being on interim pre-arrest bail is either present before the Court or in custody in another case can seek decision of his petition on merits. Thus, it is clear that an accused who is granted interim pre arrest bail by the Court and directed to remain incessant in appearing before the Court on each and every date of hearing in the petition, becomes Custodia legis as declared in case reported as "SHABBIR AHMAD versus THE STATE" (PLD 1981 Lahore 599), which means that his custody in that case now would be regulated only by the Court until decision of his bail petition; therefore, in the interregnum if he is arrested in another case, the Court while considering him in custody as mentioned in section 498-A Cr.P.C., is authorized to grant or refuse him bail in his absence, or ask for his production before the Court… Every accused as Custodia legis, pending his bail petition, sometimes faces unavoidable situations which could restrict his appearance before the Court on subsequent dates; like if he fells ill, becomes busy in wedding of his children or due to death of his near and dears, or is abducted or kept in illegal confinement, or under threats to life, or his easy and free access to the Court is restricted in any manner, then Court must grant him an opportunity to justify his absence, or if request is made for his recovery from the illegal custody, the Court must help prevent abuse of process by issuing an appropriate direction to know his whereabouts. The logic behind exercise of such powers, of course, is to save the dignity of a person from rigors of illegal arrest as guaranteed under the Constitution because arrest always brings humiliation, sufferings and also lowers the person in the estimation of others. Police should not arrest an accused who wants to approach to the Court of law for seeking protection. If police or any other person extend any such threat as not to move to the Court or make a legal application for protection, such act is an offence under section 190 of Pakistan Penal Code, 1860… As an additional note, this Court is not only a criminal Court as per section 6 of the Cr.P.C. but also a Constitutional Court under the Constitution of the Islamic Republic of Pakistan, 1973, therefore, unlike subordinate/inferior criminal Courts can pass appropriate order to protect the fundamental rights of a person with respect to life or liberty which does include to grant or decline pre-arrest bail in the absence of accused if he on subsequent dates in the petition is found to be in Police/judicial custody in another case.

iii) It has further been observed that when an accused is arrested in execution of a warrant of arrest issued from outside jurisdiction, police is bound to produce the accused before the concerned Magistrate under section 86 of Cr.P.C. for reporting his execution of duty in accordance with law and in such situation Sessions Judge is authorized to grant 'an interim post arrest bail' to the arrested accused, if the

offences are non-bailable, on furnishing surety by the accused to appear before the Court concerned on the date fixed. It is learnt that Sessions Judges frequently exercise such power liberally in order to save the accused from rigors of arrest.

Conclusion: i) The wisdom of legislature for requiring the presence of petitioner before the Court for seeking pre-arrest bail of course is the assurance that accused being alive is within the country and has not absconded. Another reason for requiring presence of accused is providing of an opportunity to effect his arrest, though not in Court premises, after dismissal of his petition for pre-arrest bail.
ii) An accused who is on interim pre-arrest bail and is either present before the court or in custody in another case can seek a decision on the merits of his petition.
iii) The Sessions Judge is authorized to grant 'an interim post-arrest bail' to the arrested accused if the offences are non-bailable when an accused is arrested in execution of a warrant of arrest issued from outside jurisdiction.

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39. **Lahore High Court**
Syed Zawar Raza v. Member, Board of Revenue, Punjab, etc.
Writ Petition No.55591 of 2022
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC2324.pdf

Facts: The Petitioner through the Constitutional Petition sought a direction to the functionaries of the Board of Revenue Punjab for acceptance of his request qua issuance of relevant extracts of certified copies of Form RL-II Register.

Issues: i) Whether Forms in RL-II Registers constitute public record or not?
ii) Whether certified copies can be lawfully refused by the department?
iii) Significance of Article 19-A of the Constitution as well as the Punjab Transparency and Right to Information Act 2013.

Analysis: i) Various Registers in Forms were prescribed to incorporate various entries corresponding to multiple phases in the allotment process. Para 63 of the Scheme prescribed Form of RL-II (Appendix V) called the Provisional Permanent Allotment Register for recording of verified claims and details of allotment and disposal of agricultural lands to displaced persons. Para 63 read with Para 60 of the Scheme also confers the right of inspection to obtain certified copies of extracts of RL-I and II Registers as per Para 3.48(1), Note 2 and 3.48(3) of the Land Records Manual. Para 63 declares that entries in RL-II Registers form the basic record of the rehabilitation settlement work. As such, ownership rights were conferred upon the allottees. Therefore, the entries contained in Form RL-II Registers constitute the basis of title with respect to allotted agricultural lands under settlement laws and settlement schemes prescribed thereunder, notwithstanding that such entries had been recorded, incorporated or mutated in subsequent revenue record in relevant registers which is being maintained regularly. It is unequivocally established that public documents kept by public bodies, public servants and

executive constitute public record notwithstanding that it is not being maintained. Article 85 of the QSO lists various categories of documents which are categorized as public documents. Hence, the contention that RL-II Registers being no longer maintained after the repeal of settlement laws have lost their efficacy and as such, do not constitute public record is a fallacy.

ii) Article 87 thereof mandates that every public officer having custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written. In addition, certified copies of public records can also be obtained under the provisions of the Punjab Copying Fees Act, 1936 and the rules for the supply of copies of records under the control of Deputy Commissioners and Commissioners in accordance with the procedure prescribed therein. As such, the Board of Revenue, Punjab has no lawful authority to permanently seal, change or alter the nature and character of public record including RL-II Registers or outrightly refuse, deny the right to inspect or obtain certified copies thereof applied by any person in accordance with law. …none of the reasons mentioned in the instructions of the Board of Revenue, Punjab for denial of certified copies of RL-II Registers…such as repeal of settlement laws, limited existence of rights under the repealed settlement laws, sealing of record due to non-authenticity of entries, possibility of interpolation and tempering in the record and opening of a floodgate of requests of issuance of certified copies of RL-II Registers can be made basis for denial of right of inspection and obtaining of certified copies of public record simply because access to public record by way of inspection and right to obtain certified copies cannot be clogged, curtailed or prohibited by any functionary of a public body. This is particularly so when the entries contained in RL-II Registers constitute basis of ownership rights.

iii) Article 19-A of the Constitution of the Islamic Republic of Pakistan, 1973 unequivocally confers the right to information as a fundamental right to every citizen to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law. The Information Act was promulgated to give effect to the fundamental right for access to information in the Province of the Punjab. As per Section 2(j) thereof, the "right to information" includes the right to inspect and obtain certified copy of a document of a public body. Section 10 thereof invariably confers the right to information to any applicant and Section 10(3) specifically proclaims that an applicant shall not be required to provide reasons for request to information and shall only be required to provide an adequate description of the information and the details necessary to provide the requisite information. Such an application can only be refused where disclosure of information falls in any of the exception enumerated in Section 13 thereof. Needless to state that none of the exceptions listed in Section 13 thereof is attracted qua issuance of certified copies of Form RL-II. Section 24(1) further states that the provisions of the Information Act shall take precedence over the provisions of any other law. Section 24(2) clarifies that an exception mentioned in Section 13 shall take precedence and any exception or limitation in any other law on right to

information may not be construed to extend the scope of the exception in the Information Act, although such provision in other law may elaborate on the exception mentioned in Section 13.

Conclusion: i) It follows from the above that public record under the repealed settlement laws including entries incorporated in Forms / RL-II Registers is public record for all intents and purposes.
ii) Request for issuance of certified copies of RL-II Registers (public record) cannot be denied.
iii) See above analysis No iii.

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40. **Lahore High Court**
Bagh Ali v. Addl. District Judge, etc.
Writ Petition No. 11458 of 2024
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC2256.pdf

Facts: Through this Writ Petition, the petitioner-defendant in a suit for specific performance of agreement to sell, has called into question orders passed by the Trial Court and the Revisional Court below, respectively, whereby the application of respondents No.3 and 4 to produce the secondary evidence was allowed.

Issues: i) Who has onus to prove in a civil case?
ii) Which type of evidence can be produced to prove a document?
iii) In what situations, the right to produce secondary evidence accrues?
iv) How the court ought to exercise power to allow the production of secondary evidence?
v) What is meant by notice to opposite party under Article 77 of QSO and in what situation such notice need not to be given?
vi) Whether it is mandatory to give formal application for production of secondary evidence and can a party give secondary evidence at the time of leading evidence without formal application?
vii) Whether mere admission of a document in evidence and making exhibit thereof prove it automatically?

Analysis: i) During the course of a civil trial, it is cardinal principle that he who asserts a fact must prove the same, which is based on latin maxim "onus probandi actori incumbit". Mode of proof is the procedure by which the "facts in issue" as also "the relevant facts" have to be proved during the trial. Articles 70-89 of the QSO contemplate the applicable rules.
ii) The general rule is that a document is to be proved through primary evidence as envisaged in Article 75 of the QSO. The said provision of law obligates that the contents of document must be proved by, bringing on record, primary evidence except the cases provided in the succeeding provisions. Article 74 of the QSO defines the term secondary evidence by providing that secondary evidence, inter alia, includes certified copies, copies made from original by mechanical process,

copies made from or compared with the original or oral accounts of the contents of a document whereas Article 76 of the QSO contemplates that secondary evidence may be given of the existence, condition or contents of a document in certain cases provided in the said provision of law.

iii) It is, inter alia, in the absence or incapacity of a party, to a lis, giving evidence to tender primary evidence in the circumstances referred to under the provisions of Article 76 of the QSO that right of a party to lead secondary evidence in respect of the document would occasion. This right of a litigant would accrue only in the cases or circumstances referred to under clauses (a) to (i) of Article 76 of the QSO.

iv) The Court seized with the matter is competent to determine whether sufficient grounds have been made out or not for the admission of secondary evidence, which power is to be exercised by the Court keeping in view the parameters and dynamics laid down in Article 76 and the facts and circumstances of each case as secondary evidence is given to prove the existence, condition, or contents of the document and nothing more beyond that. In terms of Article 77 of the QSO, secondary evidence of the contents of a document shall not be allowed unless the party proposing to give such secondary evidence is previously given, to the party in whose possession or power the document is or to his advocate, such notice to produce it as prescribed by the law.

v) Clause (a) of Article 76 provides that when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved and when after the notice mentioned in Article 77 such person does not produce it, the litigant has a right to lead the secondary evidence. However, clause (1) of the proviso to Article 77 lays down that such notice is not required to be served when the document to be proved is itself a notice.

vi) It is always open to a party to lead secondary evidence before the Trial Court, without filing any application for the reason that upon filing of any such application, one of the two course of actions are adopted by the Courts; either the secondary evidence is not considered or the evidence is considered twice, once for the purpose of "seeking leave/permission of the Court" and then again at the time of admitting the document. In first eventuality, there is possibility of losing an important piece of evidence if the application is dismissed and no appeal is filed and in case of the latter, precious time of the Court is wasted and it achieves nothing. Therefore, the party intending to produce secondary evidence may produce it at the time of recording of evidence, which the opposing party may object to at that time and the Court may decide the objection then and there or the Court may let it be recorded under objection and decide it at the time of final adjudication of the lis i.e., at the time of passing the judgment and decree… While leading evidence, in terms of Order XVIII, CPC, a witness may state that a given document cannot be proved by direct evidence and then proceed to adduce the secondary evidence in compliance with Article 76 of the QSO and the Trial Court is to consider that evidence, viz., the reason given for not leading the primary evidence and the secondary evidence led and then decide as to whether the secondary evidence led is sufficient and fulfills the mandatory requirements of Article 76 read with Article

77 of the QSO… the Court cannot insist on filing of an application for any such permission particularly, if a party to the suit has laid foundations of leading secondary evidence, either in the pleadings or while leading the evidence. The secondary evidence cannot be ousted for consideration only because an application for permission to lead secondary evidence was not filed.
vii) Mere admission of a document in evidence and making exhibit thereof does not prove it automatically and/or does not attest to its authenticity, truthfulness or genuineness, which will have to be established during the course of the trial, in accordance with law.

Conclusion: i) In civil cases who assert a fact must prove the same.
ii) See above analysis No. ii.
iii) The right of a litigant to produce secondary evidence would accrue only in the cases or circumstances referred to under clauses (a) to (i) of Article 76 of the QSO.
iv) See above analysis No. iv.
v) See above analysis No. v.
vi) It is not mandatory to give formal application for production of secondary evidence and a party can give secondary evidence at the time of leading evidence without formal application
vii) Mere admission of a document in evidence and making exhibit thereof does not prove it automatically.

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41. **Lahore High Court**
Saima Batool v. Additional District Judge, etc.
Writ Petition No.57749 of 2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC2443.pdf

Facts: The petitioner filed a suit for specific performance against the respondent, alleging that she was advised to pay an amount of Rs.22,910,000/-, which was beyond the terms of the agreement. The Trial Court issued notices and directed the petitioner to pay court fees and the remaining sale consideration. The petitioner's plaint was later rejected under Order VII Rule 11 CPC for non-payment of court fees and the remaining consideration amount. This rejection order was not challenged. Subsequently, the petitioner sought a refund of Rs.22,910,000/- deposited in the Treasury, which the Trial Court dismissed due to the absence of an order permitting the deposit. The case was remanded by the High Court with instructions to refund the amount if it was deposited per court order and not needed elsewhere. However, upon remand, the Trial Court again rejected the application, stating that the previous order had attained finality as it was unchallenged. A revision petition against this decision was dismissed for lack of pecuniary jurisdiction, leading to the current constitutional petition.

Issues: i) What is the obligation of the courts as a repository of justice and in exercise of judicial power of the State?
ii) What is doctrine of unjust enrichment?
iii) Whether the non-recording of the order by the trial court after allowing the application on order sheet can be made the basis of harm to the petitioner?

Analysis: i) … the Courts, as a repository of justice and in exercise of judicial power of the State, are obligated to dispense and administer justice and in the performance of this sacrosanct obligation, can neither cause nor become instrumental to perpetuate the injustice. Any act of Court perpetuating injustice would amount to undermining the sacrosanct existence of the Courts of law.
ii) …The doctrine of unjust enrichment aims at correction of the injustice that occurred when the claimant suffered a subtraction of wealth and some other individual, generally a defendant in a case, received a corresponding benefit. The doctrine of unjust enrichment has been well-developed in all systems of civil jurisprudence including France, Canada, English and American. In Pakistan and India, this doctrine is embodied in the Contract Act, 1872. The basis of the doctrine is that if a person has received any property or benefit from another, it is just that he should make restitution as otherwise he would be unjustly enriched at the expense of the other.
iii) If the Trial Court after allowing the application of the petitioner to deposit the amount did not record the same in the order sheet, the same is inaction on part of the Court, which cannot be made basis of harm to the petitioner. This is trite and established law and forms the philosophical and jurisprudential basis of the established principle that no one can be prejudiced by the act of the Court based on maxim "actus curiae neminem gravabit" (the act of the Court harms no one).

Conclusion: i) The Courts as a repository of justice and in exercise of judicial power of the State, are obligated to dispense and administer justice and in the performance of this sacrosanct obligation, can neither cause nor become instrumental to perpetuate the injustice.
ii) See above in analysis No. ii.
iii) If the Trial Court after allowing the application of the petitioner to deposit the amount did not record the same in the order sheet, the same is inaction on part of the Court, which cannot be made basis of harm to the petitioner.

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42. **Lahore High Court**
Sohail Niaz Khan v. Bilal Rizwan etc.
Writ Petition No.79017/2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC2437.pdf

Facts: The petitioner challenged the concurrent findings of the Courts below whereby the Eviction Petition filed by respondent No.1 was allowed after dismissal of leave to appear and contest filed by the petitioner in terms of Section 22 of the Punjab

Rented Premises Act, 2009.

Issue: Whether a tenant can deny payment of rent to one of the legal heirs after devolution of rented premises on him, where there is no conflicting demand by any other legal heir?

Analysis: Hypothetically, even if this is presumed to be true that the petitioner was inducted as tenant by father of the respondent, the rented premises has devolved upon the respondent being legal heir, which status of the respondent is neither denied nor disputed by the petitioner. Moreover, the petitioner, as a measure of showing his *bona fide*, has neither approached the Rent Tribunal for deposit of rent to be paid to the lawful landlord/landowner nor has been any interpleader suit filed rather the petitioner has failed to deposit the rent even on the direction of this Court. This indicates the dereliction, with audacity, on part of the petitioner that cannot be countenanced. The demand of the rent by the respondent/landowner not neutralized by conflicting demand by any other legal heir including the mother of the respondent/wife of the deceased father of the respondent (who was the landlord as per contention of the petitioner) obligated the petitioner to make payment of rent to the respondent, keeping in view the settled principle of law that once a tenant is always a tenant. … No other person on behalf of father of the respondent has come forward to lay any claim, although the sale deeds, pertaining to the rented premises, in favour of the respondent depicting him exclusive owner thereof are also not disputed. Therefore, denial of the tenancy relationship by the petitioner with the respondent is contumacious and therefore, the PLA was rightly dismissed and ejectment order has been correctly passed by the *fora* below.

Conclusion: A tenant cannot deny payment of rent to one of the legal heirs after devolution of rented premises on him, where there is no conflicting demand by any other legal heir.

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43. **Lahore High Court**
Hina Imtiaz v. Additional District Judge etc.
W.P No.3513/2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC2451.pdf

Facts: The petitioner filed Guardian Petition for custody of her son/minor and also contested pending guardian petition filed by respondent grandmother. The Trial Court allowed Custody Petition of the petitioner and dismissed the guardian petition of the respondent grandmother, however, the Appellate Court below has upended the said decision of the Trial Court. Hence, instant petition.

Issues: i) Whether the factors to be considered, for appointing a guardian and/or granting custody of a minor, as provided under section 17 of Guardians and Wards Act, 1890 are conclusive?

ii) Whether welfare of minor can be considered not best secured in the mother's hand?

iii) Whether factual aspect of a mother having been accused of murder of her husband-father of the minor(s) would always weigh heavily with the Court in appointing guardian and granting custody of the minor?

iv) Whether the principle of welfare of a minor is considered in absolute terms or the same is a relative consideration?

v) Whether apart from rights of custody of parents and grand-parents, the minors also have rights to enjoy each other's company?

Analysis: i) While appointing a guardian and/or granting custody of a minor, the Courts are always obligated to consider a number of factors and is to be guided by the same as laid down in Section 17 of the Guardians and Wards Act, 1890. However, the same are neither conclusive nor exhaustive for the determination as the overarching and pivotal consideration is always the welfare of the minor.

ii) A minor of very young age ought to be with their mother in ordinary circumstances, as it is the mother in whose hands a child's welfare is best secured and her lap is considered as heavenly abode. However, as stated above, it is trite and well-established principle that in deciding about a minor's custody or his/her guardianship, the welfare of the minor is of paramount consideration. This principle is embodied under Section 17 of the Act. The word "ordinarily" has much significance. It takes into account the circumstances that could be emergent in a case where the mother might be disqualified to hold a minor's custody. There could be cases where the minor's welfare may not be best secured in the mother's hand. Certainly, such circumstances disentitling her from custody/ guardianship would have to be clearly pleaded and undisputedly proved. These could be, the mother being physically or mentally incapacitated, or demonstrably living in circumstances where the minors' welfare - physical, mental and psychological, would not be secure, or accused of a crime involving moral turpitude, that would impact the minor's welfare.

iii) As welfare of a minor is a social aspect to be determined and measured with reference to his own distinct social milieu and frame of reference, the same becomes an objective assessment on the basis of subjective material of each case available before the Court. Thus, the factual aspect of a mother having been accused of murder of her husband-father of the minor(s) would always weigh heavily with the Court in appointing guardian and granting custody of the minor to the said mother but the same cannot be considered as conclusive factor as it is only a measure and mean to determine the ultimate aim of welfare of minor. There might be other factors which outweigh the mother being accused of murder in the overall determination of welfare of minor.

iv) The present case reflects that the principle of welfare of a minor cannot be considered in absolute terms rather the same is a relative consideration and, at times, the same may have to be seen and considered through the prism of what is least detrimental for the minor, which implies that the Court may have to select a

guardian out of the rival contestants who is least detrimental to the upbringing and welfare of the minor through juxta-positional and parallel analysis of persons claiming custody of minor…

v) While exercising parens patriae jurisdiction, the inter se, separation of the minors is perturbing for this Court. It is not just parents or grandparents, who had some rights of custody and/or control over the minor children but there are rights of the minors to enjoy each other's company, as siblings.

Conclusion: i) The factors to be considered, for appointing a guardian and/or granting custody of a minor, as provided under section 17 of Guardians and Wards Act, 1890 are neither conclusive nor exhaustive.

ii) There could be cases where the minor's welfare may not be best secured in the mother's hand. Certainly, such circumstances disentitling her from custody/ guardianship would have to be clearly pleaded and undisputedly proved.

iii) See above analysis No. iii.

iv) The principle of welfare of a minor cannot be considered in absolute terms rather the same is a relative consideration.

v) It is not just parents or grandparents, who had some rights of custody and/or control over the minor children but there are rights of the minors to enjoy each other's company, as siblings.

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44. **Lahore High Court**
Muhammad Shehzad v. Province of Punjab, etc.
Writ Petition No.27923 of 2024
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC2433.pdf

Facts: The petitioner filed the Constitutional Petition by alleging that he is employee of District Health Authority and hence, bar contained under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 is not attracted and inter alia the impugned transfer order has been passed against the applicable service rules of District Health Authority.

Issue: Effect of concealment of facts in filing Constitutional Petition.

Analysis: Suffice to observe that the jurisdiction of this Court, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, is extraordinary, equitable and discretionary and the prerogative writs, contemplated therein, are issued for enforcement of fundamental rights and/or, as the case may be, to inhibit and/or rectify any illegality and unlawfulness on part of the executive. It is, therefore, of utmost necessity that the petitioner who invokes this jurisdiction must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything. Concealment of fact is a serious issue, which amounts to playing fraud upon the Court. Fraud and justice never dwell together. It is reiterated that the Courts of law are meant for imparting justice between the parties and a

petitioner approaching the Court with unclean hands renders the stream of justice sullied.

Conclusion: A person whose case is based on concealment and falsehood has no right to approach the Court and such litigant must be summarily thrown out at any stage of the litigation with costs.

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45. **Lahore High Court**
Mst. Sarriya Bibi v. RPO Sheikhupura, etc.
Writ Petition No.61743-H/2023
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2024LHC2550.pdf

Facts: The petitioner filed Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 read with Section 491 of the Code of Criminal Procedure, 1898, thereby invited indulgence of High Court seeking direction for the recovery and production of her brother-in-law and nephew from the illegal, improper and unlawful custody of respondents No.2 and 3.

Issues: i) What is meant by the term "custody" under the Torture and Custodial Death (Prevention and Punishment) Act, 2022?
ii) Whether the nature of a complaint lodged under the Torture and Custodial Death (Prevention and Punishment) Act, 2022 is the same as provided under section 4(h) of the Code of Criminal Procedure, 1898?
iii) Whether the Federal Investigation Agency has the exclusive jurisdiction to investigate the offences under the Torture and Custodial Death (Prevention and Punishment) Act, 2022?
iv) What is the scope of the National Commission for Human rights in such investigations?
v) What is the rationale behind inadmissibility of a statement or confession extracted through torture, under the Torture and Custodial Death (Prevention and Punishment) Act, 2022?
vi) Whether the publicity of the Torture and Custodial Death (Prevention and Punishment) Act, 2022 is a mere procedural formality?
vii) What is the impact of non-implementation of the Torture and Custodial Death (Prevention and Punishment) Act, 2022?

Analysis: i) The term 'custody' encompasses all circumstances in which an individual is detained or deprived of his liberty by any person, including a public official or someone acting in an official capacity. This definition applies regardless of the legality, nature, or location of the detention. The definition of 'custody' extends to judicial custody and encompasses all forms of temporary and permanent restrictions on a person's movement, whether imposed by law, force, or other methods. Furthermore, an individual is considered to be in custody during proceedings involving search, arrest, and seizure.

ii) Under Section 5(1) of the Act of 2022, although the term 'complaint' is mentioned but it does not carry the same procedural and restrictive definition as found in Section 4(h) of the Code. The complaint under the Code means an allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown, has committed an offense. This definition explicitly excludes reports made by police officers. Whereas the Act of 2022 uses 'complaint' in a broader sense to include any allegations or reports against public officials that the Agency can investigate. This broader scope seeks to empower the Agency to take cognizance of various forms of information and allegations, thereby ensuring meticulous investigations into accusations of custodial torture, deaths, and rapes leveled against public officials.

iii) The primary tier [of two fold mechanism under the Act of 2022] confers exclusive jurisdiction upon the Agency, making it the sole authority empowered to investigate specific allegations of custodial torture, deaths and rapes against public officials. This centralization of expertise and authority ensures a streamlined, specialized approach by a neutral and independent agency. Consolidating skills and decision-making power within a dedicated entity guarantees investigations are conducted with impartiality, precision, and a thorough understanding of the complexities involved. The constitution of a specialized wing dedicated to the implementation of the purpose of the Act of 2022 in its true letter and spirit would be immensely beneficial.

iv) The second tier of oversight [under the Act of 2022] has been provided by the supervision of investigation process by the Commission. This supervision is crucial as it introduces an additional level of scrutiny, ensuring that the investigations are conducted with a commitment to human rights standards. This dual structure is designed to enhance accountability and transparency in handling sensitive cases of custodial torture, deaths and rapes involving public officials. It aims to prevent any abuse of power or negligence in the investigative process and ensures that the rights of all individuals involved are respected and upheld throughout the proceedings. The supervisory role of the Commission has been designed to infuse the investigative process with transparency and fairness. This supervisory role ensures that the proceedings are conducted openly and justly, shielding them from any undue influence or bias. By maintaining vigilant oversight, the Commission helps to uphold the integrity of the investigation, thereby promoting a culture of accountability and trust in how allegations against public officials are handled.

v) The rationale behind this provision of law [section 3 of the Act] is twofold and crucial. Firstly, confessions obtained under duress are unreliable and coerced, undermining the integrity of the legal process. Secondly, allowing such evidence endorses and perpetuates torture, violating fundamental rights guaranteed under Article 14 of the Constitution. Lastly, excluding such evidence protects individuals from abuse, upholds fairness, and maintains public trust in the legal system. Furthermore, it reinforces the provisions outlined in Articles 37, 38 and 39 of the Qanun-e-Shahadat Order, 1984, which unequivocally exclude confessional statements made before an investigating officer.

vi) Wide publicity also opens channels for feedback from the public, which can be invaluable for refining and improving the implementation of the law. When individuals know what protections and avenues for recourse are available to them under the law, they are better equipped to defend their rights. This knowledge empowers citizens to take appropriate actions if they encounter situations covered by the Act of 2022, thereby enhancing their protection. The extensive publicity of the Act of 2022 is integral to its success, ensuring it is effectively implemented and achieves its intended goals of promoting fairness, preventing misuse of power, and protecting the rights of individuals in custody. In nutshell, the publicity of newly promulgated law is not just a procedural formality but a fundamental aspect of its successful implementation. It shall ensure that law does not exist in a vacuum but is integrated into the daily lives of the citizens, thereby strengthening the legal system and democratic governance.

vii) Despite promulgation of the Act of 2022 in November 2022 following approval from the President, the law remained largely on paper, with no practical implementation. This situation highlights a significant gap between the formal adoption of the law and its actual enforcement, reducing it to a mere document without substantial impact. The Act of 2022, despite its grand promises and visionary provisions, has regrettably remained a paper law, with no tangible implementation. …Regrettably, the Commission and Agency have demonstrated a significant degree of indifference in enforcing the Act of 2022….The executive cannot shun its duty to enforce the statutes set forth by the representatives of the people. All State functionaries, including governmental departments and agencies, are obligated to ensure the proper execution of these laws. This duty is not merely procedural but foundational to the rule of law, maintaining the integrity and effectiveness of the legal system. Compliance with enacted laws is paramount, ensuring that the governance of the state supports the democratic principles and mandates set forth by its elected representatives. If state functionaries fail to implement laws enacted by the Parliament, it will result in complete chaos. The legal system's authority would be undermined, leading to a breakdown in the rule of law. … The principle that the failure of public functionaries to adhere to the law constitutes malice in law is a cornerstone of administrative and constitutional jurisprudence. This tenet emphasizes that public officials must act within legal bounds because any deviation reflects a malicious disregard for the rule of law.

Conclusion: i) The term 'custody' encompasses all circumstances in which an individual is detained or deprived of his liberty by any person, including a public official or someone acting in an official capacity.

ii) Under Section 5(1) of the Act of 2022, although the term 'complaint' is mentioned but it does not carry the same procedural and restrictive definition as found in Section 4(h) of the Code.

iii) The Federal Investigation Agency has the exclusive jurisdiction to investigate the offences under the Torture and Custodial Death (Prevention and Punishment) Act, 2022.

iv) The supervisory role of the Commission has been designed to infuse the investigative process with transparency and fairness. This supervisory role ensures that the proceedings are conducted openly and justly, shielding them from any undue influence or bias.

v) The rationale is twofold and crucial. Firstly, confessions obtained under duress are unreliable and coerced, undermining the integrity of the legal process. Secondly, allowing such evidence endorses and perpetuates torture, violating fundamental rights guaranteed under Article 14 of the Constitution.

vi) The publicity of Act is not just a procedural formality but a fundamental aspect of its successful implementation.

vii) Compliance with enacted laws is paramount, ensuring that the governance of the state supports the democratic principles and mandates set forth by its elected representatives. If state functionaries fail to implement laws enacted by the Parliament, it will result in complete chaos. The legal system's authority would be undermined, leading to a breakdown in the rule of law.

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46. **Lahore High Court**
Ch. Pervaiz Elahi v. The State and Another
Cr. Misc. No. 20737-B of 2024
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC2309.pdf

Facts: Through this Petition, filed under section 497 of Code of Criminal Procedure, 1898, the petitioner seeks post-arrest bail in case FIR registered under sections 420, 468, 471, 161, 162, 34 PPC, read with section 5(2) of the Prevention of Corruption Act, 1947 at Police Station ACE.

Issues: i) How does the term "reasonable grounds" in Section 497 Cr.P.C. obligate the prosecution and what happens if the prosecution fails to prove such grounds for believing the accused is guilty?

ii) Mere heinousness of offence or possibility that accused may be punished with ten years imprisonment, are not sufficient to use discretion of grant of bail to accused when his case is one of further inquiry?

iii) What is the test to determine the reasonable ground as enumerated in Sec.12 (e) of the Ordinance?

iv) When should the opinion favorable to the accused be preferred by Court?

Analysis: i) …that the expression reasonable ground(s) as contained under section 497 of *Cr. P.C.* obligates the prosecution to unveil sufficient material or evidence to disclose that the accused has committed the offence falling within the prohibitory clause and when the prosecution fails to satisfy the Court that the reasonable ground(s) do exist to believe that accused is guilty of such offence, then the Court can release accused person(s) on bail. It is also settled that for ascertaining the existence of reasonable ground(s) that accused is guilty of offence punishable with death, imprisonment of life or with ten years imprisonment, the Court cannot conduct a preliminary trial

but will only make a tentative assessment.
ii) …it must be remembered that bail is not to be withheld as a punishment and there is no legal or moral compulsion to keep people in jail merely for the fact that the allegations against them are punishable with death or with imprisonment as indicated in prohibitory clause.
iii) I am of the opinion that heinousness or gravity of offence or mere possibility that ultimately the accused person can be punished with ten years imprisonment, by itself is not sufficient to divest this Court from the discretion to grant after arrest bail specifically when the case is one of further inquiry.
iv) when two opinions can be reasonably formed on the basis of the material before the Court and both of them more or less pass the test of plausibility and none of them can be termed as perverse opinion then the one favorable to accused person should be preferred;

Conclusion: i) See analysis No. i.
ii) Bail should not be withheld solely based on the severity of the allegations punishable with death or imprisonment to life because bail is not intended as a form of punishment.
iii) Mere heinousness of offence or possibility that accused may be punished with ten years imprisonment of the offense alone are not sufficient to deny bail if case of accused is one of further inquiry.
iv) The opinion favorable to the accused should be preferred when two reasonable opinions can be formed based on the material before the court, both passing the test of plausibility and neither being perverse.

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47. **Lahore High Court**
Abdul Sattar Khan v. Muhammad Ibrahim (deceased) through L.Rs. and others
RSA No. 08 of 2012
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC2227.pdf

Facts: Through this Regular Second Appeal, order passed by the First Appellate Court is challenged, whereby, judgment and decree passed by the Trial Court has been *set-aside* and suit filed by appellant has been dismissed.

Issues: i) Whether a proposal to be bound by an oath statement of the opposite party, after acceptance and administering a special oath, is binding upon the parties and obliging the Courts to enforce the agreement?
ii) Does the Oath Act provide a procedure for recording statements on special oath?
iii) Whether genuineness of judicial record can be sacrificed at the altar of expediency of a litigant?
iv) Can a decree based on an oath statement be easily set aside if a party attempts to resile from their offer?
v) When presumption of correctness is attached to the order of Court taking special oath, can affidavit of litigant is sufficient to rebut its presumption of correctness?

vi) What is the procedure of a special oath?

Analysis: i) … that an offer or proposal to be bound by on oath statement of the opposite party after its acceptance and administering special oath is binding upon the parties, who then cannot wriggle out from the same and in the absence of satisfactory or sufficient cause the Courts are obliged to implement the agreement and rest the decision of the case on the basis of the binding contract.

ii) The Oath Act has not provided any procedure for recording the statement on special oath but the Court can adopt its own procedure ensuring that no prejudice is caused to any of the parties to the lis.

iii) …that the genuineness of judicial record cannot be sacrificed at the altar of expediency of a litigant. In the said case an affidavit of learned counsel for the appellant to contradict order passed in first regular appeal, was given no effect.

iv) Where a party attempted to resile from his offer after on oath statement of the rival party was taken, the Supreme Court held that once the oath is completed on the basis of offer and acceptance culminating into a decree, such decree cannot be lightly interfered with and set-aside on flimsy or technical ground in view of the sanctity attached to a statement on oath.

v) As already observed that reading of the order-sheet as well as final order dated 18.01.2012 of the learned First Appellate Court does not suggest that special oath was not administered. Strong presumption of correctness is attached to said order. The affidavit of a litigant (Abdul Sattar Khan) is not sufficient to rebut presumption of correctness.

vi) The *Oath Act* does not prescribe any formality of procedure for a special oath. What required is an offer (section 8 of the *Oath Act*), its communication to the other party or witness by the Court in terms of section 9 of the *Oath Act* and acceptance, followed by administration of oath and then statement, as envisaged in section 10 of the *Oath Act*.

Conclusion: i) Once a proposal to be bound by an oath statement of the opposite party is accepted and a special oath is administered, it is binding upon the parties. The Courts are then obliged to enforce the agreement in the absence of satisfactory or sufficient cause.

ii) The Oath Act does not provide a procedure for recording statements on special oath, but the Court can adopt its own procedure to ensure no prejudice to the parties.

iii) The genuineness of judicial record cannot be sacrificed at the altar of expediency of a litigant?

iv) A decree based on an oath statement cannot be easily set aside on flimsy or technical grounds.

v) The affidavit of a litigant is not considered sufficient to rebut the presumption of correctness attached to the Court's order regarding the administration of a special oath.

vi) See analysis No. (vi).

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48. **Lahore High Court**
Muhammad Tariq Sahi v. Govt. of Punjab and others
Writ Petition No.55800 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC7753.pdf

Facts: The petitioner filed the Constitutional Petition being aggrieved by enhancement of reserve price of auction of sandstone block for the purpose of mining by Government of the Punjab.

Issue: Principle regarding fixation of reserve price by the Mines and Minerals Department.

Analysis: Fixation of reserve price is prerogative of the concerned government department and in this regard, neither any existing lessee nor any prospective bidder can seek fixation of the reserve price of his own choice. There is no cavil to the proposition that while fixing reserve price, the exercise of discretion by the public authority must be just, fair and reasonable and any arbitrary, whimsical and capricious exercise of such authority is amenable to judicial scrutiny, however, the scope of jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 in that regard is very limited. For such a challenge to succeed in writ jurisdiction, it is imperative for the petitioner to establish that the reserve price fixed by the public functionaries is so unreasonable that no authority with prudent mind could have fixed the same.

Conclusion: The reserve price has been prescribed by the Special Experts Committee in the public interest keeping in view the market forces/trend, such as the fixed reserved prices of the surrounding blocks and corresponding bids received therein. The above explanation provides sufficient justification for the exercise of restraint in the matter and no case of arbitrary or unreasonable exercise of authority warranting interference has been established by the petitioner.

LATEST LEGISLATION / AMENDMENTS

1. Notification No. SOR-III(S&G)1-21/2020, dated 30.04.2024 issued in the exercise of powers conferred u/s 23 of Punjab Civil Servants Act,1974 to make amendments in the Punjab Specialized Healthcare and Medical Education Department (General, Specialists and Miscellaneous Posts) Service Rules, 1981 in the schedule in column Nos. 1 to 10 after existing entries.
2. Notification No. SO (REV)IRR/12-70/23(All CEs)-992, dated 02.05.2024 issued in exercise of powers conferred u/s 200 of the Punjab Irrigation, Drainage and Rivers Act 2023, the secretary, Government of the Punjab, Irrigation Department has been pleased to delegate his powers in terms of section 54(4) of the Act ibid, to the Chief Engineers of the Punjab Irrigation Department.

3. Notification No. SO (Cab-I) 2-24/1982(ROB)(Vol-II), dated 14.05.2024 issued by the Implementation and Coordination Wing of Services and General Administration Department with regard to the amendment in the Punjab Rules of Business 2011 by the Governor of the Punjab in the First Schedule at Sr. no 17 [Home Department] in column 3, under the heading Head of Attached Department.
4. Notification No. SO (Cab-I) 2-2/2011, dated 15.05.2024 issued by the Implementation and Coordination Wing of Services and General Administration Department with regard to the amendment in the Punjab Rules of Business 2011 in the second schedule at serial No. 57 under the head Home Department and at S. No 15 Item No I under the head Information and Culture Department.

SELECTED ARTICLES

1. **MANUPATRA**
https://articles.manupatra.com/article-details/Challenges-for-Intellectual-Property-Rights-Protection-in-CyberSpace

Challenges for Intellectual Property Rights Protection in CyberSpace by Samridhi Chauradiya

Nowadays- days most of the content is created and hosted online making it difficult to protect IP Rights from online violations. It's easier to get 'Imported' goods delivered in comparison to buying local products, such easier access is possible due to the Internet. Physically there are boundaries between two countries but virtually we live in a global world which makes it hard to trace and charge the violators. This research paper analyzes whether IP Rights can be protected online and what are the challenges faced in IP rights protection in cyberspace due to recent technological advancements and widespread usage of the Internet. This research paper can be used for policy-making decisions as it is written to find whether India needs more stringent laws or updates in existing laws for IP Rights protection in cyberspace. With the increasing use of the internet in day-to-day life by the masses there is a change in the way in which businesses operate. This research paper aims to study and evaluate the legal implications of IP Rights protection in cyberspace.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/Inequality-in-Equity-Evaluating-Differential-Rights

Inequality in Equity - Evaluating Differential Rights by Ms. Priyanshi Aggarwal and Mr. Ashwini Panwar

The rights of shareholders are determined based on the instruments they hold against capital (whether in the form of share capital, debt, or hybrid) invested. The Companies Act, 2013 ('Companies Act') allows a private company limited by shares to have varied kinds of share capital - not just equity share capital and preference share share capital. Such flexibility allows private companies to structure their share capital so that relevant persons (whether founders or appropriate authorities in the case of public-private participation projects) can exercise management control concerning critical matters, even while their ownership level dips.

3. **MANUPATRA**
https://articles.manupatra.com/article-details/Discovery-Of-Fact-Under-Section-27-India-Evidence-Act-Includes-Discovery-Of-Not-Only-Physical-Fact-Or-Corporeal-Object-But-Also-Of-Any-Mental-Condition-Or-Fact

Discovery of Fact Under Section 27 India Evidence Act Includes Discovery of Not Only Physical Fact or Corporeal Object but Also of Any Mental Condition or Fact by Rajesh Mahajan

Section 27 of the Indian Evidence Act, 1872 ("IEA"), creates an exception to the admissibility of confession made by the accused to a police officer while in custody. The section provides as to how much information received from an accused may be proved. It provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Whether the "fact discovered" includes only physical facts and objects, which can be perceived by the senses, or also includes a mental condition or a mental fact, is a question which has confounded the courts for a long time

4. **HAVARD LAW REVIEW**
https://harvardlawreview.org/print/vol-136/precedent-reliance-and-dobbs/

Precedent, Reliance, and Dobbs by Nina Varsava

Our system of stare decisis enables and encourages people to rely on judicial decisions to form expectations about their legal rights and duties into the future, and to structure their lives and mentalities based on those expectations. In following precedent, courts serve the reliance interests of those subject to the law and accordingly support their autonomy, self-governance, and dignity. Despite widespread reliance on the precedents protecting the right to abortion, in Dobbs v. Jackson Women's Health Organization *the Supreme Court declined to give any consideration to those interests. This move signals a notable shift in the Court's stare decisis jurisprudence and would seem to overrule* Planned Parenthood of Southeastern Pennsylvania v. Casey *as a precedent about precedent. This Article illuminates the treatment of stare decisis in the* Dobbs *majority opinion, focusing on its approach to reliance. I explain why the Justices joining that opinion determined that*

whatever reliance interests had attached to the precedents protecting the right to abortion were irrelevant for the purposes of a stare decisis analysis. The Justices' refusal to recognize the reliance interests at stake here, I argue, is inconsistent with the Court's previously prevailing stare decisis jurisprudence and is also mistaken as a matter of first principles, undermining basic rule of law values that stare decisis is meant to protect.

5. THE YALE LAW JOURNAL

https://www.yalelawjournal.org/article/family-law-for-the-one-hundred-year-life

Family Law for the One-Hundred-Year Life Naomi Cahn, Clare by Huntington & Elizabeth Scott

Family law is for young people. To facilitate child rearing and help spouses pool resources over a lifetime, the law obligates parents to minor children and spouses to each other. Family law's presumption of young, financially interdependent, conjugal couples raising children privileges one family form—marriage—and centers the dependency needs of children.

This age myopia fundamentally fails older adults. Families are essential to flourishing in the last third of life, but the legal system offers neither the family forms many older adults want nor the support of family care older adults need. Racial and economic inequities, accumulated across lifetimes, exacerbate these problems. Family law's failures are particularly pressing in light of a tectonic demographic shift underway in our society: Americans are living longer, with half of all five-year-olds today projected to live more than one hundred years. The proportion of older adults as a percentage of our population is also rapidly growing and will soon surpass that of minor children.

This Article argues that family law must adapt to the new old age. At a conceptual level, family law should address the interests and needs of families across the life span, not just those of younger people. And it must reflect three core commitments: centering the autonomy interests of older persons, addressing structural inequities, and ensuring that legal mechanisms are efficient and accessible.

This conceptual shift leads to a series of practical reforms to laws governing family formation and family support. The interests of older adults will be better served if they have access to a broader array of family forms and can easily customize these family relationships. We thus propose reforms that decenter marriage as the primary option and make it easier to opt into and out of legal obligations. To support the familial caregiving that is essential to wellbeing, we propose a set of reforms to federal, state, and local laws that would provide economic relief and other support to family caregivers. By offering pluralistic family forms, better support for familial caregiving, and an appreciation of the legal implications of the centrality of relationships in the last third of life, this Article charts a path for family law for the one-hundred-year life.

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-06-2024 to 15-06-2024)

A Summary of Latest Judgments Delivered by the Supreme Court of Pakistan & Lahore High Court, Legislation/Amendment in Legislation and important Articles

Prepared & Published by the Research Centre Lahore High Court

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
The Monal Group of Companies, Islamabad v. Capital Development Authority through its Chairman and others.
Civil Petition No. 305 of 2022 and CMA No. 892 of 2022.
Mr. Justice Qazi Faez Isa HCJ, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Naeem Akhtar Afghan.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._304_2022_11062024.pdf

Facts: Through this Constitutional Petition, the petitioner has challenged the order of High Court which was passed in Writ Petition, wherein the lease agreement of the petitioner was declared void and without any legal effect.

Issue: Whether any lease, license, allotment or permission to operate restaurants in the National Park is contrary to the provisions of the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979?

Analysis: Any lease, license, allotment or permission to operate restaurants in the National Park is contrary to the provisions of the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979.

Conclusion: Yes, any lease, license, allotment or permission to operate restaurants in the National Park is contrary to the provisions of the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979?

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2. **Supreme Court of Pakistan**
Capital Development Authority, Islamabad thr. its Chairman & others v. M. Sajid Pirzada
Civil Petition No.993/2014 and Civil Petition No. 1117/2014
Justice Qazi Faez Isa, CJ, Justice Irfan Saadat Khan, Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._993_2014.pdf

Facts: Eight petitioners filed a Writ Petition before the High Court against Capital Development Authority, the Pakistan Environmental Protection Agency and petitioner No. 02. They alleged that 'CDA illegally, unlawfully changed the Master Plan and created new plots in the closed end Street and had sought a declaration that CDA could not do so and that it be restrained from approving the building plans in respect of the said plots and be directed to adhere to the Master Plan. The learned Single Judge allowed the petitions, cancelled the said plots, and further directed CDA to initiate departmental action against those who had violated the Master Plan. Petitioner no. 02 had also filed a separate Writ Petition seeking a restrain CDA from interfering in the peaceful possession and construction of a house on the Plot, which he had earlier purchased from a purchaser to whom it had been allotted. His Petition was dismissed. He assailed the said judgments in Intra Court, but they were dismissed, and the said decisions assailed.

Issues: i) Can an easement right be adjudicated under the constitutional jurisdiction of the High Court?
ii) What is the correct interpretation of the term 'Future Use' in the context of land designation, and does it imply that the land must be left open or used exclusively for amenity purposes, thereby affecting its allotment?

Analysis: i) In any case an easement right, if any, could not have been agitated in the constitutional jurisdiction of the High Court, nor in fact was this done.
ii) The learned counsel could not show what particular rights of the private respondents had been violated in allotting the said plots but he could not do so nor did he refer to any law which prevented CDA from utilizing, for the benefit of earlier allottees, land designated for 'Future Use'. The term 'Future Use' does not mean that the land is to be left open nor does it mean that it is to be used for amenity purposes, which may, have prohibited their allotment. Regretfully, these points were not considered by the learned Judges of the High Court.

Conclusions: i) An easement right could not be adjudicated within constitutional jurisdiction of the High Court.
ii) The term 'Future Use' does not mean that the land is to be left open nor does it mean that it is to be used for amenity purposes, which may, have prohibited their allotment.

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3. **Supreme Court of Pakistan**
Muhammad Aslam (decd.) thr. His LRs etc. v. Molvi Muhammad Ishaq (decd.) thr. L.Rs. etc.
Civil Appeals No.1429 to 1433/2014
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Irfan Saadat Khan, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1429_2014.pdf

Facts: The Appellants assailed the order of High Court whereby it allowed petitions filed u/s 12(2) CPC and set aside decree passed in favour of the predecessor-in-interest of the appellants in preemption suits along with the execution proceedings and dismissed the preemption suits.

Issues: i) Is there always a presumption of correctness and sanctity attached with regard to judicial proceedings?
ii) If an Order of the lower Court merges in the order of the higher Court, whether the order of the lower Court is to be deemed as an order of the higher hierarchy?
iii) What is the period of limitation to file application u/s 12(2) of CPC?
iv) Whether anyone should suffer on account of a lapse on the part of a Court?
v) Are the concurrent findings of lower court liable to be struck down if based on misreading or non-reading of the material available on the record or the evidence and are a result of miscarriage of justice?

Analysis: i) Insofar as the veracity of the compromise is concerned, we find ourselves in agreement with the Learned Counsel for the Appellants that sanctity and assumption of truth is always attached to Court proceedings…..This Court in Muhammad Ramzan, Fayyaz Hussain, Waqar Jala Ansari, and recently in Abdul Aziz has held that there is always a presumption of correctness and sanctity attached with regard to judicial proceeding.

ii) It would also not be amiss to mention that the order of the High Court which was subsequently challenged in CPLA stood decided by this Court in the case of Abdul Qayyum, and in our view stood merged in the aforenoted Order of this Court. It is a settled proposition of law that if an Order of the lower Court merges in the order of the higher Court the order of the lower Court is to be deemed as an order of the higher hierarchy.

iii) It is also pertinent to mention that Applications under section 12(2) CPC were filed in the year 1990, i.e. after almost 11 years of the compromise, though it was averred that these applications were filed, after the entries of jamadbandi made in 1987 and hence were in time but equally true is the fact that in those Applications the main question agitated on behalf of the Respondents was with regard to the entering into compromise in a defective manner and thereafter, obtaining the decree by way of fraud or misrepresentation by the present Appellants. This Court in Sarfraz has held that:

"…Although under the provisions of the Limitation Act no specific time has been prescribed for filing of application under section 12(2), C.P.C., therefore, Article 181 of Limitation Act being residuary will govern such proceedings according to which maximum period of three years has been prescribed for filing the application under section 12(2), C.P.C."

Therefore, even in a hypothetical sense, if one were to count the period of limitation from 1987, the Applications under section 12(2) CPC were time barred.

iv) The legal maxim actus curie neminem gravabit is quite clear: 'an act of court shall prejudice no man.' It is also a settled proposition of law by this Court that no one should suffer on account of a lapse on the part of a Court.

v) We are mindful of the fact that usually concurrent findings of the lower Courts are not to be is disturbed and interfered with but in cases where such findings are found to be erroneous and perverse, they are liable to be struck down if based on misreading or non-reading of the material available on the record or the evidence and are a result of miscarriage of justice.

Conclusion: i) There is always a presumption of correctness and sanctity attached with regard to judicial proceedings.

ii) If an Order of the lower Court merges in the order of the higher Court the order of the lower Court is to be deemed as an order of the higher hierarchy.

iii) The period of limitation to file application u/s 12(2) of CPC is three years.

iv) No one should suffer on account of a lapse on the part of a Court.

v) The concurrent findings of lower court are liable to be struck down if based on misreading or non-reading of the material available on the record or the evidence

and are a result of miscarriage of justice.

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4. **Supreme Court of Pakistan**
Amir Sultan etc., v. Adjudicating Authority-III EOBI, Islamabad and another etc.
C.P.L.A No.3531/2021 etc.
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3531_2021_13062024.pdf

Facts: Two sets of judgments from different High Courts are impugned here, whereby the relevant matters were decided in favour of the Employees' Old-Age Benefits Institution and persons/respondents respectively. Hence there have been conflicting opinions of the respective High Courts on the interpretation of Section 22(2) of the Employees' Old-Age Benefits Act, 1976.

Issue: What are the requirements to be fulfilled in order to avail the exception under Section 22(2) of the Employees' Old-Age Benefits Act, 1976?

Analysis: Under Section 22(1) of the Employees' Old-Age Benefits Act, 1976, an insured person is entitled to monthly old-age pension at the rate specified in the Schedule to the Act ibid; (i) if he is sixty years of age or fifty five years in case of a woman and (ii) contribution in respect of him were paid for not less than fifteen years. Section 22(2) of the Act ibid provides an exception to the above to the effect that an insured person will also be entitled to an old-age pension if he, on 1st July 1976 or on any day thereafter on which Act ibid becomes applicable to the industry or establishment was; (i) over forty years of age or thirty five years in case of a woman, and contribution in respect of him was paid for not less than seven years or (ii) over forty five years of age or forty years in case of a woman, and contribution in respect of him was paid for not less than five years.The first cut-off date i.e., first day of July 1976 is the date when the Act ibid was implemented. The second cut-off date is when the Act ibid becomes applicable to an industry or establishment. Section 1(4) of the Act ibid provides three different modes through which the Act ibid becomes applicable to an industry or establishment. It is at these two points in time when the age of the insured person in terms of Section 22(2)(i) and (ii) becomes relevant for invoking the exception of reduced years of contribution under the said provision. The age of the insured person alone is not the determining factor for the case to fall within the exception under Section 22(2) but it is also that the age must be so at the relevant cut-off dates mentioned above.

Conclusion: To avail the exception under Section 22(2) of the Employees' Old-Age Benefits Act, 1976, the insured person must satisfy that he was in employment in the industry or establishment on the first day of July 1976 or on the day the Act ibid

became applicable to such an industry or establishment and was of the age mentioned in Section 22(2)(i) and (ii) of the Act ibid.

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5. **Supreme Court of Pakistan**
Muhammad Ashraf v. The Chief Engineer (Administration), WAPDA, and others
Civil Review Petition No.1077/2023
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p._1077_2023.pdf

Facts: Through the present Review Petition, the petitioner sought a review of the order passed Hon'ble Judge in Chamber whereby his appeal filed against an order of the Registrar was dismissed and the said order was maintained. The Registrar had returned a CMA being not entertainable of the petitioner filed for restoration of his CMA.

Issue: Whether the Registrar's original order returning a petition and the Judge-in-Chambers's appellate order maintaining it are both administrative in nature and whether a review petition against these orders is entertainable?

Analysis: Both the Registrar's original order returning the petitioner's CMA and the appellate order maintaining that order were administrative in nature. Therefore, we asked the petitioner to specify under which provision of the Constitution or the Rules he has filed the present review petition. He, however, could not cite any such provision. It hardly needs clarification that Article 188 of the Constitution and Order 26 of the Rules pertain to the review of judicial orders, not administrative orders (…) As held by this Court in Fazal Muhammad on the judicial side and reiterated in Ahsan Abid on the administrative side, a petition that does not fall within the scope of any provision of the Constitution, the law or the Rules is "frivolous" and should not be received/entertained by the Registrar, as per Rule 5 of Order 17 of the Rules. The office must be vigilant about this legal position and perform its administrative duty in this regard with due diligence.

Conclusion: The Registrar's original order returning a petition and the Judge-in-Chambers's appellate order maintaining it are both administrative in nature and a review petition against these orders is not entertainable.

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6. **Supreme Court of Pakistan**
Muhammad Safeer and others v. Muhammad Azam and others
Civil Petitions No. 888 of 2024
Mr. Justice Munib Akhtar, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._888_2024.pdf

Facts: The petitioners have invoked the jurisdiction of Supreme Court conferred under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 and they have sought leave against the judgment, passed by the High Court whereby the petition filed under Article 199 was dismissed solely on the ground of

maintainability.

Issues: i) Whether there is any exception to the general rule that the High Court will not ordinarily entertain a petition under Article 199 when an adequate remedy is available?
ii) Is the scope of a review distinct from that of an appeal?
iii) What are grounds for exercising the power of review under sub-section (1) of section 8 of the Punjab Board of Revenue Act 1957?
iv) Can remedies provided under sub-section (1) of Section 8 of the Punjab Board of Revenue Act 1957 be considered adequate for the purposes of exercising jurisdiction under Article 199 of the Constitution?

Analysis: i) It is settled law that the rule that the High Court will not ordinarily entertain a petition under Article 199 when an adequate remedy is available and such remedy only regulates the exercise of constitutional jurisdiction and does not affect its existence. When the law provides an adequate remedy, constitutional jurisdiction under Article 199 will ordinarily only be exercised in exceptional circumstances. The exceptional circumstances which may justify exercising jurisdiction when an adequate remedy is available are when the order or action assailed before the High Court is palpably without jurisdiction, manifestly malafide, void or corum non judice. The tendency to bypass a statutory remedy is ordinarily discouraged so that the legislative intent is not defeated. The High Court, while exercising its discretion, must take into consideration the facts and circumstances in each case in order to determine whether the remedy provided under the statute is illusory or not. These principles have been consistently highlighted by this Court.
ii) The power of review stems from the statute and, therefore, it is to be exercised by a court or an authority having regard to the conditions and limitations expressly prescribed by the legislature. The scope of review is distinct from that of an appeal. In case of an appeal all questions of fact and law are to be considered but the scope of a review is limited to the conditions and limitations expressly provided under the relevant statue which confers the power.
iii) Sub-section (1) of section 8 of the Act of 1957 sets out the scope and the grounds for exercising the power of review. The three grounds expressly stated in section 8(1) of the Act of 1957 are:(i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by the person seeking review at the time when the decree was passed or the order was made, (ii) some mistake or error apparent on the face of the record and lastly, ‘for any other sufficient reason’. The review jurisdiction conferred under section 8 of the Act of 1957 is, therefore, confined and limited to the said three grounds. This Court has held in the case of Muhammad Din that the expression ‘for any other sufficient reason’ does not extend to every cause which would make the remedy by way of review available but such cause must be relatable to the circumstances as discovery of new and important matter or some mistake or error apparent on the face of the record. The expression, therefore, is to be read ejusdem generis with the preceding

expressions or grounds. Any other interpretation would change the nature of the review contrary to the legislative intent, because the legislature had indeed not intended to provide the remedy of an appeal. The scope of the review jurisdiction under section 8 of the Act of 1957 is, therefore, restricted to the grounds expressly prescribed by the legislature.

iv) Any ground taken and not covered within the scope of the jurisdiction of review provided under section 8 of the Act of 1957 would have rendered the remedy illusory and definitely not adequate for the purposes of exercising jurisdiction under Article 199 of the Constitution. This Court, in the case of Syed Asad Hussain has observed that the expression adequate remedy represents an efficacious, reachable, accessible, advantageous and expeditious remedy.

Conclusion: i) There are exceptional circumstances which may justify exercising jurisdiction when an adequate remedy is available are when the order or action assailed before the High Court is palpably without jurisdiction, manifestly malafide, void or corum non judice.

ii) The scope of review is distinct from that of an appeal.

iii) There are three grounds expressly stated in section 8(1) of the Act of 1957 are: (a) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by the person seeking review at the time when the decree was passed or the order was made, (b) some mistake or error apparent on the face of the record and lastly, 'for any other sufficient reason'.

iv) Remedies provided under sub-section (1) of Section 8 of the Punjab Board of Revenue Act 1957 cannot be considered adequate for the purpose of exercising jurisdiction under Article 199 of the Constitution.

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7. **Supreme Court of Pakistan**
Rashid Baig etc. v. Muhammad Mansha etc.
Civil Petition No.925-L of 2018
Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._925_l_2018.pdf

Facts: The petitioners through this Petition filed under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, challenged the orders of High Court, revisional court and trial court, wherein their application for summoning of revenue officers as witnesses was dismissed.

Issues: i) Whether every interim order needs to be challenged during pendency of the suit?

ii) Whether a party is bound to show that the order challenged through the constitutional jurisdiction is without jurisdiction?

iii) Whether trial court can stay the proceedings of trial or execution or sine die adjourn the same without any injunctive order during its pendency before High Court or Supreme Court?

iv)Whether execution proceedings and trial court proceedings are automatically stayed when a petition is filed with the Supreme Court?

Analysis: i) When a party challenges any interim order during the pendency of a suit under revisional jurisdiction or constitutional jurisdiction vested in the revisional court or the High Court, that court has to exercise the jurisdiction keeping in view that it is an interim order, as every interim order need not to be challenged at that stage because it is now settled that when a suit is finally decided by the trial court, all the interim orders become open in appeal, if there is a defect in the interim order that is open to scrutiny at the stage of final appeal, as the first appeal is continuation of a trial and first appellate court is a court of fact and law. But, if a party to the suit opts to challenge an interim order when it is passed through appellate jurisdiction, revisional jurisdiction or constitutional jurisdiction, while exercising such jurisdiction the scope of jurisdiction vested in the court must be in the view of the party challenging the same and the court while dealing with the interim order must also keep in view the scope of jurisdiction to scrutinize the interim orders.

ii) When a party comes to the High Court in constitutional jurisdiction, he is bound to show that the order challenged through the constitutional jurisdiction is without jurisdiction then the High Court can exercise the constitutional jurisdiction to declare the order as such. When an order has been passed while exercising discretion, the same cannot be declared by any stretch of imagination to be without jurisdiction.

iii) When the matter is pending before the High Court or Supreme Court, the learned trial court on the move of any of the parties or even without reference of any of the parties stays the proceedings of the trial court or the proceedings of the execution or sine die adjourn the same in order to wait for the final determination or decision of the court. if said practice is carried on by the parties or even learned trial court while ignoring all these factors i.e. sine die adjourning the proceedings or stays the proceedings of the suit without any injunctive order, will face the consequences of said illegal order.

iv) The execution proceedings as well as the proceedings before the learned trial court do not automatically stay when the petition is filed before Supreme Court unless an injunctive order is granted by it. When the injunctive order is not granted, the parties to the proceedings applying for stay of the proceedings or execution without any injunctive order and in some eventualities after refusal of injunctive order from it the parties to the proceedings before the learned trial court apply for stay of execution or proceedings in the suit which is not only a clear cut abuse of process of law but it is contempt of court.

Conclusion: i) Every interim order needs not to be challenged.

ii) A party is bound to show that the order challenged through the constitutional jurisdiction is without jurisdiction.

iii) The trial court cannot stay the proceedings of trial or execution or sine die

adjourn the same without any injunctive order during its pendency before High Court or Supreme Court.

iv)The execution proceedings, as well as the proceedings before the trial court, do not automatically stay when the petition is filed with the Supreme Court, unless an injunctive order is issued.

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8. **Supreme Court of Pakistan**
Muhammad Arshad (deceased) through LRs. v. Bashir Ahmad (deceased) through LRs and others
Civil Appeals No. l38-L & 139-L/2010
Mr. Justice Yahya Afridi, Mr. Justice Amin-ud-Din Khan, Mr. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.a._138_l_2010.pdf

Facts: Leave has been granted in this matter to decide the question as to whether the period of 30 days for deposit of "Zare Soim" shall start from the date of institution of suit or from the order made by the learned trial court before expiring of 30 days as provided in Section 24 of Punjab Pre-emption Act, 1991.

Issue: Whether in the light of section 24 of the Punjab Preemption Act, 1991 "Zare Soim" is to be deposited within 30 days from the date of filing of the suit or from the date of order passed by the court?

Analysis: It is settled that plaintiff is required to deposit "Zare Soim" within 30 days from the date of filing of suit for pre-emption because the power/discretion of the Court to extend time as envisaged by section 148 of the C.P.C is only available to the Court, where the time has been fixed, by the Court itself or under the Code of Civil Procedure, but where the time for the performance of an act has been fixed by some other statute, the Court in terms of section 148, C.P.C. has no jurisdiction at all to enlarge and extend that time.

Conclusion: It is settled that plaintiff is required to deposit "Zare Soim" within 30 days from the date of filing of suit for pre-emption.

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9. **Supreme Court of Pakistan**
Shah Madar Khan v. Tariq Daud and others
Civil Petition No.3877/2023
Mr. Justice Yahya Afridi, Mr. Justice Amin-Ud-Din Khan, Mrs. Justice Ayesha A. Malik.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3877_2023.pdf

Facts: A suit was filed by respondent /plaintiff for declaration that he be declared owner of the suit plot. Trial court was pleased to dismiss the suit. The appeal was preferred. The first appellate court was pleased to accept the appeal and decreed the suit. The High Court also agreed with the findings recorded by the first appellate court and dismissed the civil revision. Hence, this Petition.

Issues: i) What nature of pleadings is required for challenging a document?

ii) What legal implications arise when a party fails to challenge the execution and registration of a document in his pleadings, does not initiate a comparison of signatures and thumb impressions to prove the document's authenticity and fails to discharge the initial onus of proof?

iii) What is the appropriate legal remedy for a plaintiff who seeks to challenge a registered power of attorney?

Analysis: i) Despite the fact that as per pleadings of the plaintiff himself after examining the documents in the office of City Development and Municipal Department, he came to know about the power of attorney and the transfer documents. He did not implead defendant No. 3 as the series of the facts suggest that defendant No. 2 was attorney of the plaintiff-respondent and he transferred the suit plot in favour of defendant No. 3 through registered Sale Deed and thereafter, defendant No. 1 purchased the said plot from defendant No. 3. Plaintiff has not specifically challenged any of the above said documents. He has generally denied the appointment of the attorney and further execution of sale deeds by his attorney. For challenging a document we are clear in our mind that there must be specific pleadings.

ii) In the instant case we are clear in our mind that plaintiff-respondent who has not specifically challenged the execution and registration of power of attorney in his pleadings when his case is that he has seen said document in the office of City Development and Municipal Department, further he himself produced the copy of said document as Exh.PW-1/1 and failed to discharge initial onus of negation of the registration of the document, it was very easy and simple for the plaintiff to get his signatures and thumb impression upon the impugned document compared with his sample signatures and thumb impressions but he has not opted to initiate this legal process. In these circumstances, when plaintiff failed to discharge initial onus, no question of shifting of onus upon the vendee/defendant or Attorney who has fully supported that he being validly constituted attorney of the plaintiff, sold the plot to defendant No. 3 who was initially not made party to the suit and was subsequently made party and further defendant No. 3 sold the plot to defendant No. 1 the petitioner before this Court.

iii) We are further of the view that when registered power of attorney by plaintiff in favour of defendant No. 2 proved, plaintiff was if at all having the right to challenge the suit document through filing a suit for cancellation of document under section 39 of the Specific Relief Act, 1877 and not a suit for declaration filed under section 42 of the Act.

Conclusions: i) For challenging a document, there must be specific pleadings.

ii) When a party fails to challenge the execution and registration of a document in his pleadings and does not initiate a comparison of signatures and thumb impressions to prove the document's authenticity means that he fails to discharge initial onus, then no question of shifting of onus upon the other party.

iii) The appropriate legal remedy for a plaintiff seeking to challenge a registered

power of attorney is to file a suit for cancellation of the document under Section 39 of the Specific Relief Act, 1877, rather than filing a suit for declaration under Section 42 of the same Act.

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10. **Supreme Court of Pakistan**
Ahmad Nawaz etc. v. The State & another
Crl. PLA No.458/2024 & 459/2024
Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._458_2024.pdf

Facts: The petitioners sought leave to appeal against the orders of Lahore High Court, Lahore, whereby the pre-arrest bail was declined to them in case arising from FIR lodged under sections 420/468/471 PPC.

Issue: Whether it is better to err in granting bail than to err in refusal?

Analysis: Liberty of a person is a precious right which has been guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. By now it is also well settled that it is better to err in granting bail than to err in refusal because ultimate conviction and sentence can repair the wrong resulted by a mistaken relief of bail.

Conclusion: It is better to err in granting bail than to err in refusal.

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11. **Supreme Court of Pakistan**
Adnan Shafai v. The State & another
Crl.P.L.A No.238/2024
Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._238_2024.pdf

Facts: The petitioner sought leave to appeal against the order of Lahore High Court whereby the post-arrest bail was declined to him under sections 109 and 409 PPC read with section 5(2) of the Prevention of Corruption Act, 1947 and Section 3/4 of Anti-Money Laundering Act, 2010.

Issues: Principles for grant of post-arrest bail on statutory ground.

Analysis: Under the third proviso to Section 497(1) of the Cr.P.C, a statutory ground exists for granting post-arrest bail to an accused due to delays in conclusion of the trial. A person accused of an offence not punishable by death has the right to be released on bail if they have been detained for over a year, provided the delay in the trial's conclusion was not caused by their actions or the actions of someone on their behalf, and situation does not fall under the fourth proviso to Section 497(1) of the Cr.P.C. This Court in the case of Shakeel Shah (2022 SCMR 1) elaborately explained the concept of bail on statutory grounds and ruled that it is subject to two exceptions: a) Delay in conclusion of the trial if occasioned by an act or omission of the accused or by any other person acting on his behalf; b) The

accused, a hardened, desperate or dangerous criminal, in the opinion of the Court.

Conclusion: See analysis part above.

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12. **Supreme Court of Pakistan**
Muhammad Anwar v. The State & another
Crl.PLA No.340/2024
Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._340_2024.pdf

Facts: Through the present Petition, the petitioner sought leave to appeal against the order of Lahore High Court, Lahore whereby the pre-arrest bail has been declined to him in an FIR registered under Section 489-F PPC.

Issues: i) Whether a cheque given as security, prima facie attracts the elements of section 489-F PPC?
ii) Whether every transaction where a cheque is dishonoured may constitute an offense?

Analysis: i) Primarily, the agreement in question is executed between Petitioner and Muhammad Attique regarding the plot. The perusal of said agreement indicates that the cheque in question was issued as "Guarantee" from the petitioner to Muhammad Attique. The complainant has failed to produce any receipt issued by the petitioner while receiving cash amount of 2,00,000/-. The tentative assessment of the record shows that it is not toward the fulfillment of any obligation but rather it was given as security. Prima facie, it does not attract the elements of section 489-F PPC.
ii) This Court has held in the case titled Mian Allah Ditta, 1 that every transaction where a cheque is dishonoured may not constitute an offense. The foundational elements to constitute an offense under this provision are the issuance of the cheque with dishonest intent, the cheque should be towards repayment of loan or fulfillment of an obligation, and lastly that the cheque is dishonoured.

Conclusion: i) A cheque given as security, prima facie does not attract the elements of section 489-F PPC.
ii) Every transaction where a cheque is dishonoured may not constitute an offense.

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13. **Supreme Court of Pakistan**
Muhammad Hassan v. The State
J.P.No.120 of 2017
Muhammad Ibrahim v. The State
Cr.P.No.305-L of 2017
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Musarrat Hilali.
https://www.supremecourt.gov.pk/downloads_judgements/j.p._120_2017.pdf

Facts: In a Private Complaint arising out of an F.I.R., pertaining the offences under sections 302/ 324/211/148/149 of the Pakistan Penal Code,1860, the petitioner was convicted under section 302(b) P.P.C., and was awarded sentence of death as tazir alongwith compensation for the legal heirs of the deceased. The petitioner filed the Criminal Appeal before the learned High Court and the trial court transmitted the Murder Reference for confirmation or otherwise of the sentence of death awarded to the petitioner. Vide impugned judgment, appeal of the petitioner was dismissed whilst maintaining his conviction, but his sentence was altered from death to imprisonment for life and the Murder Reference was answered in negative, hence, this Jail Petition for Leave to Appeal seeking his acquittal. The complainant has filed the Criminal Petition for Leave to Appeal seeking to set aside the impugned judgment and uphold the judgment of the trial court imposing the death sentence on the petitioner.

Issues: i) What is the impact of unexplained delay in reporting the occurrence?
ii) What will be evidentiary value of the statements of such eye-witnesses who can not justify their presence at place of occurrence?
iii) Whether medical evidence may convert an unreliable witness into a reliable one?

Analysis: i) The failure of Prosecution to explain in evidence the reasons for delay in reporting the occurrence to the Police would show dishonesty on the part of the complainant.
ii) If the presence of the eye-witnesses at the scene at the relevant time of occurrence was not natural, then it was mandatory for them to justify their presence at the place of occurrence at the relevant time with some cogent reasons.
iii) The value and status of medical evidence is always corroborative in its nature. Corroboration means support or confirmation and corroborative evidence is some evidence other than the one it confirms. Corroboration minimizes errors in judicial proceedings and is dictated by prudence. The object of corroboration is to ensure the conviction of the guilty and to prevent that of innocents.

Conclusion: i) If reasons for delay in reporting the occurrence to the Police are not explained in prosecution evidence, then it would show that FIR was lodged with deliberation and consultation.
ii) If the eye-witnesses cannot justify the reasons for their presence at the place of occurrence at the relevant time, then they would be chance witnesses and their evidence would not be free from doubt.
iii) The medical evidence is mere a corroboratory evidence, which does not convert an unreliable witness into a reliable one.

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14. **Supreme Court of Pakistan**
Iftikhar Hussain alias Kharoo v. The State
Jail Petition No.195 of 2017
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi
Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/j.p._195_2017.pdf

Facts: Petitioner faced trial before the Additional Sessions Judge in case FIR registered under Section 302, PPC. After a regular trial, he was convicted under Section 302(b) PPC and sentenced to death along with compensation under Section 544-A Cr.P.C. to be paid to the legal heirs of the deceased. In default thereof, to further undergo six months simple imprisonment. Aggrieved of his conviction and sentence, the petitioner filed a criminal appeal, whereas the Trial Court transmitted the murder reference. Both these matters were taken up together by the High Court and through the impugned judgment, the sentence of the petitioner was altered into rigorous imprisonment for life while keeping the amount of compensation and imprisonment in default intact. Murder Reference was answered in the negative. Benefit of Section 382-B Cr.P.C. was also extended to him, hence this jail petition.

Issues: i) What effect does it have when the father and brother of the deceased do not shift or accompany the body to the hospital and also when their names are not mentioned in the inquest report?
ii) How can the fact of an accused absconding be used in relation to other evidence?
iii) Whether conviction of accused can be sustained on abscondence alone?
iv) What is the significance of the presumption of innocence in the criminal justice system, and how does it affect the burden of proof in a trial?

Analysis: i) It has been time and again ruled by this Court that delay in sending body for the post mortem is reflective of the absence of witnesses at the place of occurrence. Had they been present at the place of occurrence, they would have strived to save the life of deceased and immediately shifted him to the hospital. However, contrary to normal reaction, father and brother of deceased, here neither shifted the deceased to hospital nor accompanied him when the same was sent to hospital by the police. This behaviour alone creates a sufficient doubt in their presence at the place of occurrence… In view of the material contradictions in the statements of eye-witnesses and the fact that they did not accompany the deceased in the hospital and that their names were neither mentioned in Inquest report nor in post-mortem report as the identifiers of the dead body speaks volumes about the absence of the eye-witnesses at the place of occurrence. Hence, their testimonies are unreliable.
ii) The fact of abscondence of an accused can be used as a corroborative piece of evidence, which cannot be read in isolation but it has to be read along with substantive piece of evidence.

iii) …it was observed that conviction on abscondence alone cannot be sustained. In the present case, substantive piece of evidence in the shape of ocular account is untrustworthy as mentioned above, therefore, no conviction can be based on abscondence alone.

iv) This Court has maintained a consistent approach that presumption of innocence remains with the accused till such time the prosecution on the evidence satisfies the Court beyond a reasonable doubt that the accused is guilty. Therefore, the expression is of fundamental importance to our criminal justice system. It is one of the principles, which seeks to ensure that no innocent person is convicted. Thus, it is the primary responsibility of the prosecution to substantiate its case against the accused, and the burden of proof never shifts, except in cases falling under Article 121 of the Qanun-e-Shahadat Order, 1984.

Conclusion: i) It creates sufficient doubt regarding their presence at the place of occurrence when the father and brother of the deceased do not shift or accompany the body to the hospital.

ii) See above analysis No. ii.

iii) Conviction of accused on abscondence alone cannot be sustained.

iv) See above analysis No. iv.

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15. **Supreme Court of Pakistan**
Haider Mehar v. The State
Criminal Petition No.474-L of 2024
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._474_l_2024.pdf

Facts: The petitioner being aggrieved of his conviction and sentence recorded by Additional Sessions Judge in a case FIR under Sections 9(1)3-C and 9(1)6-C of the Control of Narcotic Substances Act, 1997 approached the High Court, by filing a criminal appeal, which was dismissed; hence this Petition.

Issue: What factors are to be considered for recording the conviction and sentence in Narcotic case?

Analysis: It reflects from the record that all the prosecution witnesses in their statements have unanimously given details qua raid, arrest of the petitioner, search, recovery of the contraband, preparation of samples, its safe transmission to the police station, safe custody and the delivery thereof to the Punjab Forensic Science Agency (PFSA). During cross-examination, the prosecution witnesses remained consistent. The report of the PFSA confirms the nature of the contraband recovered from the possession of the petitioner.

Conclusion: See above analysis.

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16. **Supreme Court of Pakistan**
Chanzeb Akhtar v. The State and another
Cr. P. No.548 of 2020
Haji Mirza Zafar v. Chanzeb Akhtar and another
Cr. P. No.602 of 2020
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed HasanAzhar Rizvi, Mr. Justice Naeem Akhtar Afghan.
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._548_2020.pdf

Facts: The petitioner was convicted under Section 302(b) PPC and sentenced to death along with payment of compensation to the legal heirs of the deceased and fine. The petitioner approached the High Court by filing criminal/jail appeals, whereas the Trial Court transmitted the murder reference. All these matters were taken up together by the High Court and through the impugned judgment the appeals filed by the petitioner were dismissed, however, death sentence awarded to the petitioner was converted into life imprisonment and murder reference was answered in the negative; hence this Petition for leave to appeal.

Issue: Can a non-establishing motive be considered a mitigating circumstance to convert a death sentence to a sentence of imprisonment for life?

Analysis: In the absence of premeditation to commit murder where motive is not proved by the prosecution, the same may be considered as the mitigating factor in order to reduce the quantum of sentence in cases involving capital punishment.

Conclusion: Non-establishing motive can be considered a mitigating circumstance to convert a death sentence to a sentence of imprisonment for life.

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17. **Supreme Court of Pakistan**
Asif Ali & another v. The State through Prosecutor General Punjab
Criminal Petition No. 1602 of 2023
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1602_2023.pdf

Facts: Petitioners were convicted and sentenced under Section 9 (c) r/w Section 15 of the Control of Narcotic Substances Act, 1997, by the Trial Court. An appeal was preferred; however, it was dismissed by the Appellate Court; hence, this Petition for leave to appeal.

Issues: i) What is the duty of prosecution in the cases under CNSA 1997?
ii) What would be the effect if any link in the chain, starting from the recovery of narcotics until transmission to the laboratory, is missing?
iii) How to prove the transmission of the samples to the chemical examiner?
iv) What would be the effect of non-production of the persons tasked with the responsibility of transmitting the sample to the chemical examiner as witnesses?
v) What is the time limitation for dispatching the sample to the laboratory?

vi) What is the mandate of the Police Rules, 1934, regarding entry and removal of any article into/from the store room (Malkhana)?

Analysis: i) In the cases under CNSA 1997 it is the duty of the prosecution to establish each and every step from the stage of recovery, making of sample parcels, safe custody of sample parcels and safe transmission of the sample parcels to the concerned laboratory.
ii) This chain has to be established by the prosecution and if any link is missing, the benefit of the same has to be extended to the accused.
iii) In the cases under CNSA 1997, the prosecution is under a bounded responsibility to drive home the charge against an accused by proving each limb of its case that essentially includes production of the witness tasked with the responsibility of transmitting the samples to the office of Chemical Examiner.
iv) The failure is devastatingly appalling with unredeemable consequences that cast away the entire case.
v) Under rule 4(2) of the Control of Narcotic Substances (Government Analysts) Rules 2001 ('Rules of 2001'), the sample for analysis has to be dispatched to the testing laboratory at the earliest but not later than seventy two hours of the seizure.
vi) Rule 22.70 of the Police Rules, 1934 mandates that Register No.XIX shall be maintained in Form 22.70 of the Police Rules in the police station wherein, with the exception of articles already included in Register No.XVI, every article placed in the store room (Malkhana) shall be entered and the removal of any such article shall also be noted in the appropriate column.

Conclusion: i) See above analysis No. i.
ii) If any link in the aforementioned chain is missing, the accused shall be given the benefit.
iii) The transmission of the sample shall be proved by producing witnesses who were assigned the task of transmitting the samples to the chemical examiner.
iv) See above analysis No. iv.
v) The sample shall be dispatched for analysis at the earliest but not later than seventy-two hours of the seizure.
vi) See above analysis No. vi.

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18. **Supreme Court of Pakistan**
Noman Mansoor alias Nomi v. The State
Crl.P.894/21 & Crl.A.207/21
Mst. Zainab Khattak v. Noman Mansoor alias Nomi, etc.
Crl.A.215/21
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Ms. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._894_2021.pdf

Facts: Petitioner-convict was convicted and sentenced u/s 302(c) PPC to undergo Rigorous Imprisonment for a period of 14 years by the Additional Sessions Judge.

He challenged the judgment by filing an appeal before the High Court. In the meanwhile, the complainant/wife of the deceased also filed an appeal u/s 417(2A) Cr.P.C. alleging therein that on the basis of the facts and circumstances of the case, the sentence u/s 302(b) PPC should have been awarded to the convict/petitioner, instead of u/s 302(c) PPC. The High Court converted the Criminal Appeal into a Criminal Revision Petition and consequently the conviction and sentence awarded to the petitioner/convict by the Trial Court was converted from section 302(c) PPC to that of section 302(b) PPC and the sentence awarded to him was enhanced to imprisonment for life. The convict filed Petition and the complainant filed Criminal Appeal for further enhancement of the sentence from life to death.

Issues: i) Whether the High Court can convert an appeal against acquittal into a Criminal Revision?

ii) Whether upon filing of a direct Criminal Revision or after conversion of a Criminal Appeal into a Criminal Revision, a notice as provided by sub-section (2) of section 439 Cr.P.C. is to be issued to the other side? If not what would be its effect?

iii) Whether the presence of the convict before the Court in his own appeal is deemed to serve the purpose of notice under section 439 (2) Cr.P.C and no fresh notice is required?

Analysis: i) Under section 439 Cr.P.C., the High Court may in its discretion, exercise any of the powers conferred on a court of appeal, whenever, facts calling its exercise either brought to its notice or otherwise comes to its knowledge. Since the complainant/respondent filed an appeal against acquittal of the petitioner, raising some substantial question of law, therefore, the High Court can consider it as Criminal Revision Petition and convert it accordingly, for the purpose of satisfying itself to the correctness, legality or proprietary of any findings, sentence or orders. There is no impediment in doing so, therefore, the order of the conversion of the Criminal Appeal into a Criminal Revision suffers from no illegality or irregularity.

ii) It is apparent, rather admitted fact that no notice of the proceedings upon the Criminal Revision was issued to the petitioner/convict. In its revisional jurisdiction, the High Court can enhance the sentence passed by fora below, but before it does so, it must comply with the provisions of subsection (2) of section 439 Cr.P.C., which make it mandatory that no Order under this section shall be made to the prejudice of the accused, unless he has had an opportunity of being heard either personally or through a legal practitioner of his choice, so as to defend himself. The purpose of issuing notice is to give an opportunity to the accused/convict either to pursue his matter personally or through a legal practitioner of his own choice so as to defend himself. Without issuing the mandatory notice the impugned judgment is contrary to the provisions of section 439 (2) Cr.P.C. This has deprived the petitioner from his legal as well as constitutional right of consulting a legal practitioner of his own choice and fair

trial as provided by Article 10 and 10-A of the Constitution of the Islamic Republic of Pakistan, respectively.

iii) As far as the contention of the learned counsel for the complainant that the convict was already before the Court in his own appeal and both the matters were heard together, therefore, he was deemed to be served and no fresh notice was required. We are not in agreement with the learned counsel for the reason that the appeal filed by the convict and the revision filed by the complainant are altogether different in their nature and outcome. Once the law prescribes a thing to be done in a particular manner, it must be done as such, therefore, a separate notice as required by sub-section (2) of section 439 Cr.P.C. was mandatory, without which no order should have been passed, hence, the impugned judgment is not sustainable.

Conclusion: i) The High Court can convert an appeal against acquittal into a Criminal Revision.

ii) Upon filing of a direct Criminal Revision or after conversion of a Criminal Appeal into a Criminal Revision, a notice as provided by sub-section (2) of section 439 Cr.P.C. is to be issued to the other side and without issuing the mandatory notice the judgment would be contrary to the provisions of section 439 (2) Cr.P.C.

iii) The presence of the convict before the Court in his own appeal is not deemed to serve the purpose of notice under section 439 (2) Cr.P.C and fresh separate notice as required is mandatory

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19. **Supreme Court of Pakistan**
Muhammad Saeed v. The State and another
Criminal Petition No.968 of 2017
Waqar Ali v. M. Saeed Khan and others
Criminal Petition No.891 of 2017
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._968_2017.pdf

Facts: Petitioner was convicted under section 302(b) PPC and sentenced to death by learned Additional Sessions Judge and was also made liable to pay compensation of Rs.1,00,000/- under section 544-A Cr.P.C. and in default thereof to further undergo imprisonment for six months. The conviction and sentence awarded by the Trial Court was challenged by the convict initially by filing Jail Appeal and subsequently Criminal Appeal before the High Court whereas Trial Court forwarded Murder Reference to the Appellate Court for confirmation or otherwise of the death sentence. The complainant also filed Criminal Revision for enhancement of the compensation amount. The Appellate Court while maintaining the conviction of the convict under section 302(b) PPC converted the death sentence of the convict into imprisonment for life with benefit of section 382-B Cr.P.C and enhanced the amount of compensation from Rs.1,00,000/-

(rupees one hundred thousand) to Rs.10,00,000/- (rupees one million) in default whereof the convict was held to undergo simple imprisonment for six months; hence these Petitions.

Issues: i) Whether a dying declaration is a question of fact and can be made before a private person?
ii) Whether non proving of the motive introduced by the prosecution witnesses at the trial is a mitigating circumstance?

Analysis: i) Under Article 46 of the Qanun-e-Shahadat Order, 1984 the sanctity of a dying declaration has to be evaluated with great care and caution and the evidence consisting of dying declaration has to be appreciated with due diligence. A dying declaration is a question of fact which has to be determined on the facts of each case. To find out truth or falsity of a dying declaration, a case is generally to be considered in all its physical environment and circumstances. A dying declaration can be made before a private person but it should be free from any influence and the person before whom it is made has to be examined. It is necessary to ascertain that the dying declaration was made honestly, its maker was in a fit state of mind to make the statement, its maker was free from outside influence, its maker was fearing death and had made truthful statement.
ii) … as well as absence of motive in the FIR, non proving of the motive introduced by the prosecution witnesses at the trial about the desire of the convict to marry the deceased prior to her marriage with PW-9 Sabir Ullah and single stab wound on the abdomen of deceased have rightly been considered as mitigating circumstances by the Appellate Court to award lessor sentence of imprisonment for life to the convict.

Conclusion: i) A dying declaration is a question of fact and can be made before a private person.
ii) Non proving of the motive introduced by the prosecution witnesses at the trial is a mitigating circumstance.

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20. **Supreme Court of Pakistan**
Khalid v. The State through PG Sindh
Criminal Petition No.668 of 2019
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._668_2019.pdf

Facts: The petitioner and co-accused were convicted under section 302(b) of the Pakistan Penal Code by the Trial Court. The petitioner and co-convict preferred Jail Appeals before the High Court. The Jail Appeal filed by the petitioner was dismissed while the Jail Appeal filed by the co-convict was accepted by the Appellate Court. Feeling aggrieved of the conviction and sentence awarded by the Trial Court and maintained by the Appellate Court, the petitioner has filed instant Criminal Petition for Leave to Appeal.

Issues: i) Under what circumstances, testimony of an eye witness cannot be discarded merely due to his relationship with the deceased?
ii) Whether non-proving of the motive alleged by the prosecution can be considered as a mitigating circumstance?
iii) Under what circumstances, the principle of 'expectancy of life' may be considered as a relevant factor alongwith other circumstances for reducing his sentence of death to imprisonment for life?

Analysis: i) In absence of any ulterior motive/animus for false implication of an accused, the confidence inspiring testimony of an eye witness, whose presence with the deceased at the time and place of occurrence is established, cannot be discarded merely due to his relationship with the deceased.
ii) According to the settled principles, non-proving of the motive alleged by the prosecution can be considered as a mitigating circumstance for reducing the quantum of sentence awarded to an accused.
iii) Where a convict sentenced to death undergoes period of custody equal to or more than a full term of imprisonment for life during the pendency of his judicial remedy against his conviction and sentence of death, the principle of 'expectancy of life' may be considered as a relevant factor alongwith other circumstances for reducing his sentence of death to imprisonment for life.

Conclusion: i) Testimony of an eye witness cannot be discarded merely due to his relationship with the deceased when his presence with the deceased at the time and place of occurrence is established.
ii) Non-proving of the motive alleged by the prosecution can be considered as a mitigating circumstance.
iii) The principle of 'expectancy of life' may be considered as a relevant factor alongwith other circumstances for reducing his sentence of death to imprisonment for life where a convict sentenced to death undergoes period of custody equal to or more than a full term of imprisonment for life.

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21. **Supreme Court of Pakistan**
Khial Muhammad v. The State
Cr. A. No.36 of 2023 and Cr.P. No.5-Q of 2021
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Naeem Akhtar Afghan
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._36_2023.pdf

Facts: The appellant being aggrieved of his conviction and sentence approached the High Court by filing a Criminal Appeal, whereas the Trial Court transmitted the Murder Reference. These matters were taken up together by the High Court and through the impugned judgment, the appeal filed by the appellant was dismissed while maintaining his death sentence and murder reference was answered in the

affirmative. Thereafter, the appellant approached Supreme Court by filing a Criminal Petition for leave to appeal which was granted.

Issues: i) What if the F.I.R. is delayed on the part of the complainant?
ii) Whether recording the statement of witnesses under section 161 Cr.P.C at a belated stage casts doubts on the version of prosecution?
iii) Whether the benefit of single doubt can be extended in favour of the accused?

Analysis: i) Such delayed F.I.R. on the part of the complainant shows dishonesty and that it was lodged with deliberation and consultation. Reference in this regard may be made to the case reported as Amir Muhammad Khan versus The State (2023 SCMR 566) wherein a delay of only five hours and ten minutes in reporting the matter to and lodging the FIR by the police was considered indicative of dishonesty on the part of the complainant.
ii) Supreme Court has time and again ruled that recording the statement of witnesses under section 161 Cr.P.C at a belated stage casts serious doubts on the version of prosecution.
iii) It is a well settled principle of law that for the accused to be afforded this right of benefit of doubt, it is necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the accused… …The conviction must be based on unimpeachable, trustworthy and reliable evidence. Any doubt arising in prosecution case is to be resolved in favour of the accused…

Conclusion: i) If the F.I.R. is delayed on the part of the complainant, it shows dishonesty that it was lodged with deliberation and consultation.
ii) Recording the statement of witnesses under section 161 Cr.P.C at a belated stage casts serious doubts on the version of prosecution.
iii) If there is only one doubt, the benefit of the same must go to the accused.

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22. **Supreme Court of Pakistan**
The General Manager, Punjab Provincial Cooperative Bank, Ltd, etc. v. Ghulam Mustafa
CA No. 795-L/12
The Punjab Provincial Cooperative Bank, Ltd, etc. v. Iftikhar Ahmed, etc.
CA No. 123-L/13
Barkat Ali v. Secretary Cooperative, Government of the Punjab, Lahore, etc.
CA No. 2508-L/17
Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._795_l_2012.pdf

Facts: According the compendium of facts, the Civil Appeals are directed against the judgments rendered by the High Court whereby the High Court in its Writ Jurisdiction issued directions to the Punjab Provincial Cooperative Bank, Limited to decide the pending departmental appeals of the respondent employees. The

Civil Petition for leave to appeal is directed against the impugned judgment rendered by the High Court whereby, the Writ Petition was dismissed by the same High Court on the ground that the Punjab Provincial Cooperative Bank, Ltd has no statutory rules of service, therefore, the Writ Petition could not be maintained against the Bank.

Issue:

i) Definition of the term 'Jurisdiction'.
ii) What does doctrine of Stare Decisis connote?
iii) What is the "Doctrine of Indoor Management"?
iv) Whether the service rules of the Punjab Provincial Cooperative Bank, Ltd are non-statutory and what is the nature of relationship between the Bank and its employees?
v) Whether in absence of statutory rules of service, the employees of the Bank can approach the High Court for redress of the grievance?
vi) How the relationship of the Master and Servant to be construed?
vii) What is the remedy available to the employees of corporations and institutions with no statutory rules of service?
viii) What are the forms of remedies available to the different class or classes of employees to challenge adversarial or departmental actions including dismissal and termination of service in the different laws of our country?

Analysis:

i) The term 'jurisdiction' in the legal parlance means the command conferred to the Courts by the law and the Constitution to adjudicate matters between the parties.

ii) The doctrine of Stare Decisis, which is a Latin term, connotes "let the decision stand" or "to stand by things decided". Similarly, the Latin maxim Stare decisis et non quieta movere means "to stand by things decided and not to disturb settled points". This represents an elementary canon of law that Courts and judges should honor the decisions of prior cases on the subject matter which maintains harmony, uniformity and renders the task of interpretation more practicable and reasonable while adhering to it for resolving a lis based on analogous facts. The doctrine of stare decisis is to be adhered to as long as an authoritative pronouncement holds the field, until and unless the dictates of compelling circumstances fortified by rationale justify the exigency of a fresh look for judicial review. The doctrine of binding precedent has the excellence of fostering firmness, uniformity, and also supports the development of law.

iii) it is an essential principle of the "Doctrine of Indoor Management" that the management and the Board of Directors, corporate bodies, and/or corporations, in any event, should adhere to and implement their own service rules, no matter if the service rules are non-statutory and framed for internal use only; but for all practical purposes, the appeals must have been decided within a reasonable period of time. Once a right of appeal is provided in the staff rules to an employee to challenge any adverse action against him, then noncompliance of a provision of appeal makes it unserviceable and redundant and amounts to the denial of authority under which mandate the staff rules were framed for the benefit and

convenience of the employees.

iv) The Punjab Cooperative Bank Limited Staff Service Rules (2010) were framed in exercise of the powers conferred upon the Board of Directors by means of Bye-Law 37(2) (zm) of the Punjab Provincial Cooperative Bank Limited Bye-Laws, 2010. The Administrator of the Bank framed the said Service Rules in supersession of the Punjab Provincial Cooperative Bank Limited (Staff) Service Rules, 1986, to define, govern, administer, and regulate the services of the employees of the Bank. Though these rules are meant for internal consumption, but it is lucidly specified in Rule 2, that the relationship between the Bank and its employees shall be that of a master and servant. The survey of its corporate structure or substratum of the Bank unambiguously connotes that the terms and conditions of the employees are not governed by any statutory rules of service but they are governed and regulated under the relationship of a "master and servant".

v) Time and again, this Court laid down in various dictums that in absence of statutory rules of service, the aggrieved employee cannot invoke the writ jurisdiction of the High Court… No writ petition lies in the High Court in the matters where the terms and conditions of service are not governed by statutory rules. In view of the well-settled exposition of law, we feel no hesitation in our mind to hold that Writ Petitions in the Lahore High Court filed by the employees were not maintainable owing to the relationship of master and servant and the absenteeism of the statutory rules of service.

vi) The relationship of master and servant cannot be construed as so sagacious that the master i.e. the management of a statutory corporation or the corporation and/or company under the control of government having no statutory rules of service or the private sector may exercise the powers at their own aspiration and discretion in contravention or infringement of fundamental rights envisioned under the Constitution. Under Article 3 of our Constitution, it is the responsibility of the State to ensure the elimination of all forms of exploitation and the gradual fulfillment of the fundamental principle, from each according to his ability to each according to his work; and under Article 11, there is no concept of slavery, and the same is considered non-existent and forbidden and no law permits or facilitates its introduction into Pakistan in any form; while under Article 38 (Principles of Policy) it is the responsibility of the State to ensure equitable and just rights between employer and employees and provide for all citizens, within the available resources of the country, facilities of work and adequate livelihood with reasonable rest and leisure. Therefore, in all fairness, even under the relationship of master and servant, fundamental rights should be respected and followed, as the same are an integral part of due process.

vii) In case they are found aggrieved, they may avail an appropriate remedy in accordance with the law which is, of course, a civil suit and not the writ petition… Despite such settled exposition of law, every now and then, employees file writ petitions against any adverse actions against them beyond the backing of statutory rules of service and the employer, i.e. the statutory corporations or institutions which have no statutory rules of service, vigorously come up with the

same plea every time and, ultimately, the writ petitions are dismissed and the employees are directed to seek appropriate remedy. At every such occasion, much effort and time of the Court is consumed to recapitulate the settled exposition of law. Obviously, under the relationship of master and servant, the only available or applicable remedy is the filing of a civil suit in the civil court against actions detrimental to the interest of any such employee.

viii) A civil servant, if found aggrieved of any adverse action, obviously, can approach the Service Tribunal after filing departmental appeal/representation according to the relevant Civil Servant and Service Tribunal Acts. In tandem, if the employee is not a civil servant but is covered and regulated under the statutory rules of service, then of course, he may file a constitution petition in the High Court under Article 199 of the Constitution and challenge the violation of service rules or any other departmental action adverse to his interest. In juxtaposition, an employee of industrial and commercial establishment, if he is a worker/workman, he may approach the concerned labour courts and/or the National Industrial Relations Commission (NIRC) under the relevant Industrial Relation Laws, but the category of employees who are excluded from the purview and definition of worker or workman cannot approach the labour courts or the NIRC, and in case of any injustice, inequality, discrimination or any adverse action against any such employee who is neither covered under the definition of civil servants, nor is regarded as worker or workman, and nor his employment is covered or regulated by statutory rules of service, has the only remedy to approach the civil court and file a civil suit in terms of Section 9 of the Code of Civil Procedure, 1908.

Conclusion: i) See above analysis No. i.

ii) See above analysis No. ii.

iii) See above analysis No. iii.

iv) See above analysis No. iv.

v) In absence of statutory rules of service, the aggrieved employee cannot invoke the writ jurisdiction of the High Court.

vi) See above analysis No. vi.

vii) The only available or applicable remedy is the filing of a civil suit in the civil court against actions detrimental to the interest of any employee of the institutions with no statutory rules of service.

viii) See above analysis No. viii.

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23. **Supreme Court of Pakistan**

Naseem Khan, etc. v. The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar, and others

Civil PetitionsNo.2074to2082 of 2023

Mr. Justice Muhammad Ali Mazhar, Mrs. Justice Ayesha A. Malik, Mr. Justice Irfan Saadat Khan.

https://www.supremecourt.gov.pk/downloads_judgements/c.p._2074_2023.pdf

Facts: The impugned Notification was issued to the effect that the100% promotion quota reserved for the petitioners was reduced to75% and the remaining 25% quota was

allocated to the cadre of "Field Assistants" which allegedly affected seniority and promotion of the petitioners. The petitioners filed a Departmental Appeal but no response was received, hence they filed Appeals before the Tribunal which were dismissed by means of the impugned judgment, hence these Civil Petitions.

Issues: i) Whether a Court may interfere in policy decision regarding conditions of eligibility or fitness for appointment or promotion of a civil servant?
ii) When the judicial review can be sought against the legislative and executive actions of the decision maker?
iii)Whether there is any vested right in promotion or rules determining the eligibility for promotion of a civil servant?

Analysis: i) The required qualifications for appointment to any post is the sole discretion and decision of the employer and it is in its realm to prescribe criteria and the preference for appointment of a candidate, in which matter the court has no sphere of influence to arbitrate or set down the course of action or put forward the conditions of eligibility or fitness for appointment or promotion until and unless the relevant laws and rules seems to have been violated but in the absence of any such defilement, the relevant rules of the Federal Government and Provincial Governments separately under their Civil Servants Acts and Appointment, Promotion and Transfer Rules will undoubtedly prevail.
ii) It is within the dominion of the Court to exercise its power of judicial review to evaluate and weigh upon the legislative and executive actions in order to maintain and sustain the rule of law, check and balance and render null and void an unlawful action or decision and the Court may also invalidate and strike down the laws, acts and governmental actions if found unlawful and beyond the scope of power and jurisdiction.
iii) The question of eligibility correlates to the terms and conditions of service whereas fitness for promotion is a subjective evaluation based on an objective criteria. Though consideration for promotion is a right, yet the promotion itself cannot be claimed as of right.

Conclusion: i) The court cannot interfere in policy decision regarding conditions of eligibility or fitness for appointment or promotion of a civil servant until and unless the relevant laws and rules prescribing the benchmark thereof are violated.
ii) The judicial review can be sought if the decision maker was misdirected in terms of the law and the power is wrongly and improperly exercised as acting *ultra vires*.
iii) There is no vested right in promotion or rules determining the eligibility for promotion of a civil servant.

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24. **Supreme Court of Pakistan**
Mst. Ishrat Bibi v The State through Prosecutor General, Punjab and another
Criminal Petition No.243 of 2024
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Athar Minallah.
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._243_2024.pdf

Facts: Through this Petition filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, the petitioner assailed the order of High Court, wherein her post arrest bail in FIR u/s 302, 34, 118, 120-B, 109 & 506 PPC was declined.

Issues: i) Whether the first proviso of section 497 of Cr.PC, accentuates an additional consideration for the grant of bail of persons categorized in the proviso as a rider?
ii) Whether the first proviso of section 497 of Cr.PC, has made equal the power of the court to grant bail in the offences listed under the prohibitory clause alleged against an accused under the age of sixteen years, a woman accused and a sick or infirm accused?
iii) Whether the principle of vicarious liability can be looked into at the bail stage?
iv) Whether the purpose of bail is to ensure the attendance of the accused at the trial court?
v) What is meant by further inquiry and reasonable grounds for the purpose of bail under section 497 Cr.PC?
vi) What is meant by the rule of consistency?

Analysis: i) The first proviso of section 497 Cr.PC, accentuates an additional consideration for the grant of bail while dealing with applications for bail of persons categorized in the proviso as a rider. This is encapsulated as beneficial legislation, in addition to considering whether there are reasonable grounds for believing that the accused is guilty of an offence punishable with death, imprisonment for life, or imprisonment for ten years. Undoubtedly, the court has to first satisfy whether the bail petitioner is covered under the proviso or not. It is often seen that many women implicated in cognizable offenses are found poverty-stricken and illiterate and in some cases, they have to take care of children, including suckling children, as argued in this case. There are also many examples where the children are to live in prisons with the mothers. This ground reality is also ought to be considered which would not only involve the interest of such accused women, but also the children who are not supposed to be exposed to prisons, where there shall always be a severe risk and peril of inheriting not only poverty but also criminality, during the incarceration of their mother. The first proviso facilitates the court to conditionally release on bail an accused if he is under the age of 16 years or is a woman or is sick or infirm under the doctrine of welfare legislation, reinforced by way of the proviso which requires a purposive interpretation for extending the benefit of bail to the taxonomy of persons mentioned in it, and the same is to be taken into consideration constructively and auspiciously depending upon the set of circumstances in each case, among other factors, including the satisfaction of

the court that the bail petitioner does not have any criminal record or is not a habitual offender.

ii) The first proviso to section 497(1) Cr.PC, has thus made equal the power of the court to grant bail in the offences listed under the prohibitory clause alleged against an accused under the age of sixteen years, a woman accused, and a sick or infirm accused, to its power under the first part of Section 497(1), Cr.PC. This means that in cases of women, etc., as mentioned in the first proviso to section 497(1), irrespective of the category of the offence, bail is to be granted as a rule and refused as an exception.

iii) The principle of vicarious liability can be looked into even at the bail stage if from the FIR, the accused appears to have acted in preconcert or shared a common intention with his co-accused.

iv) The purpose of bail is to ensure the attendance of the accused at the trial court, but neither is it punitive nor preventative. Likewise, there is no inevitable or unalterable principle for extending the facility of bail, but the facts and circumstances of each case dominate and command the exercise of judicial discretion. It is also a well-settled exposition of law that there is no hard and fast rule to regulate the exercise of the discretion for grant of bail except that the discretion should be exercised judiciously.

v) The turn of phrase further inquiry reckons the tentative assessment which may create doubt with respect to the involvement of the accused in the crime. The doctrine of further inquiry denotes a notional and exploratory assessment that may create doubt regarding the involvement of the accused in the crime. Whereas, the expression reasonable grounds refers to grounds which may be legally tenable, admissible in evidence, and appealing to a reasonable judicial mind as opposed to being whimsical, arbitrary, or presumptuous. The prosecution is duty bound to demonstrate that it is in possession of sufficient material or evidence, constituting reasonable grounds that the accused had committed an offence falling within the prohibitory limb of Section 497, Cr.PC, while for achieving bail, the accused has to show that the evidence or material collected by the prosecution and/or the plea taken by the defence visibly created a reasonable doubt or suspicion in the prosecution case.

vi) The rule of consistency, or in other words, the doctrine of parity in criminal cases, including bail matters, recapitulates 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 the 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.

Conclusion: i) Yes, the first proviso of section 497 Cr.PC, accentuates an additional

consideration for the grant of bail while dealing with applications for bail of persons categorized in the proviso as a rider.
ii) The first proviso has thus made equal the power of the court to grant bail in the offences listed under the prohibitory clause alleged against an accused under the age of sixteen years, a woman accused, and a sick or infirm accused.
iii) The principle of vicarious liability can be looked into even at the bail stage
iv) The purpose of bail is to ensure the attendance of the accused at the trial court.
v) The doctrine of further inquiry denotes a notional and exploratory assessment that may create doubt regarding the involvement of the accused in the crime. Whereas, the expression reasonable grounds refers to grounds which may be legally tenable, admissible in evidence, and appealing to a reasonable judicial mind as opposed to being whimsical, arbitrary, or presumptuous.
vi) The rule of consistency, or in other words, the doctrine of parity in criminal cases, including bail matters, recapitulates 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.

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25. **Supreme Court of Pakistan**
Ashfaq Hussain and another v. Ghulam Nabi and another
Civil Petition No.917-K of 2022
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._917_k_2022.pdf

Facts: Through this petition, the petitioners challenged the judgment passed by the High Court of Sindh, Karachi, whereby Constitutional Petition filed by the Respondent No. 1 against the order of Appellate Court was allowed.

Issue: Whether a landlord under section 15 of the Sindh Rented Premises Ordinance, 1979 may seek eviction of a tenant on the ground of default in payment of rent and subletting of rented premises without consent of the landlord?

Analysis: Section 15 of the Sindh Rented Premises Ordinance, 1979 (SRPO, 1979) envisages the various grounds on the basis of which the landlord may seek eviction of the tenant including the ground of default in payment of rent and subletting of any rented premises without the written consent of the landlord. The case of the petitioner is that the respondent without the consent and knowledge of the petitioners/landlords started the business of running of a clinic and entered into a partnership with the doctors named above in respect of the subject premises/shop.

Conclusion: A landlord under section 15 of the Sindh Rented Premises Ordinance, 1979 may seek eviction of a tenant on the ground of default in payment of rent and subletting of rented premises without consent of the landlord.

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26. **Supreme Court of Pakistan**
Muhammad Yousuf Bhindi, etc. v. M/s. A.G.E. & Sons (Pvt) Ltd. & others, etc.
Civil Petitions No.1032-K to 1053-K & 1062-K/2023
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1032_k_2023.pdf

Facts: According to the petitioners, the respondent No.1 mentioned incorrect address for service and without service of notice or summons, they were declared ex parte and subsequently, ex parte judgments and decrees were passed against them. Then petitioners filed their respective applications for setting aside such orders, judgments and decrees but their applications were dismissed by the Trial Court. The petitioners filed appeals before the District & Sessions Judge which were allowed. Being aggrieved, the respondent No.1 filed Civil Revisions in the High Court which were allowed vide consolidated judgment and the orders passed by the Additional District & Sessions Judge were set aside.

Issues: i) When the court proceeds ex-parte and pass decree without recording of evidence?
ii) What if the summons was not duly served or there was no sufficient time to enable defendant to appear and answer on the day fixed in the summons?
iii) What is the procedure where the Court has adjourned the hearing of the suit ex parte, and the defendant appears at or before such hearing?
iv) What if the defendant appears and the plaintiff does not appear when the suit is called on for hearing?
v) Whether the plaintiff can file fresh suit in respect of same cause of action in case of dismissal?
vi) What remedy is available for the defendant if the decree is passed ex-parte against him?
vii) What is imperative for the Court before ordering the substituted service?
viii) Whether citing of wrong nomenclature of section change the complexion of the application or the relief claimed in such application?
ix) What is the limitation period for applying against the dismissal for default of appearance or for failure to pay costs of service of process or to furnish security for costs?
x) Which article will apply where there is no specific Article or limitation is provided in the Limitation Act meant for making any application for setting aside an ex parte order under Order IX Rule 7, CPC?
xi) Whether the defendant can join proceedings at any subsequent stage even if the proceedings are ordered ex parte?
xii) What is the nature of revisional jurisdiction under section 115 of C.P.C?

Analysis: i) Order IX Rule 6, CPC, which relates to the procedure when only the plaintiff appears and the defendant does not appear when the suit is called on for hearing,

and if it is proved that the summons was duly served, the Court may proceed ex parte and pass decree without recording evidence.

ii) When, if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant, and when if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future date to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

iii) While Order IX Rule 7, CPC, is germane to the procedure where the Court has adjourned the hearing of the suit ex parte, and the defendant, at or before such hearing, appears and assigns good cause for his previous nonappearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

iv) While Order IX Rule 8, CPC, encapsulates that where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed.

v) …Order IX Rule 8, CPC, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action but he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit.

vi) Order IX Rule 13, CPC, is concomitant and systematized to the case in which a decree is passed ex parte against a defendant; he may apply to the Court and if the Court is satisfied that the summons was not duly served, or that the defendant was prevented by any sufficient cause, the Court shall make an order setting aside the decree upon such terms as to costs, payment into Court or otherwise as it thinks fit.

vii) Much emphasis was made on the substituted service envisaged under Order V Rule 20, CPC, but for all practical purposes, this provision does not come into effect automatically, but before ordering the substituted service, it is imperative for the Court to first be satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order for service of summons by affixing a copy of the summons at some conspicuous part of the house, if any, in which the defendant is known to have last resided or carried on business or personally worked for gain or any electronic device of communication which may include telegram, telephone, phonogram, telex, fax, radio and television or urgent mail service or public courier services or beat of drum in the locality where the defendant resides or publication in press or any other manner or mode as it may think fit.

viii) … Though the citing of wrong nomenclature of section was not noted, but in our view, it does not change the complexion of the application or the relief claimed in such application if it is clear otherwise from the contents of the application what the applicant actually claimed and prayed for. The Court has to

see the pith and substance rather than the nomenclature, and if the court perceives any such irregularity, it may in the interest of justice, call upon the applicant to correct and rectify such error of nomenclature, which may be a typing error or may have been caused due to some misunderstanding, but on the notion or mention of a wrong section, an adverse order cannot be passed without adverting to the substance of such application.

ix) In fact, according to Article 163 of the Limitation Act, the plaintiff may apply within 30 days from the date of dismissal for setting aside dismissal for default of appearance or for failure to pay costs of service of process or to furnish security for costs. It is clear that this Article does not relate to any right to apply by the defendant, but the plaintiff alone, so under the guise of this provision, the petitioners who were the defendants in the Trial Court, and not the plaintiff, could not be penalized.

x) However, for the defendants, Article 164 of the Limitation Act is applicable, in which the defendant may apply within 30 days from the date of the decree or where the summons was not duly served, when the applicant has knowledge of the decree, for setting aside a decree passed ex parte; but there is no specific Article or limitation is provided in the Limitation Act meant for making any application for setting aside an ex parte order under Order IX Rule 7, CPC, therefore, for all intents and purposes, Article 181 of the Limitation Act would apply wherein to meet such eventualities, three years' limitation period is provided when the right to apply accrues.

xi) It is also well settled that even if the proceedings are ordered ex parte the defendant may join proceedings at any subsequent stage and file an appropriate application for setting aside ex-parte order with good cause. A person nevertheless declared ex parte, continues as party to the proceedings and even can cross examine the witnesses. If good cause is shown to the satisfaction of the Court to justify his previous absenteeism, the ex parte proceedings may be set aside by the Court and the defendant may then be restored to the position he held on the date when he was proceeded against ex parte. This rule invests the court with the wide-ranging potential discretion to allow the application if the defendant who was declared ex parte assigns good cause for previous absence.

xii) It is well settled that under Section 115, C.P.C, the revisional court has to ruminate the jurisdictional error of the Court below; if it acted in exercise of its jurisdiction illegally or with material irregularity or committed some error of procedure which affected the ultimate decision. In fact, this jurisdiction is corrective and supervisory in nature to ensure safe administration of justice and in a fit case, the Court in the same provision can exercise suo motu jurisdiction to advance the cause of justice to satisfy and reassure that the order is within its jurisdiction; the case is not one in which the Court ought to exercise jurisdiction and, in abstaining from exercising jurisdiction, the Court has not acted illegally or in breach of some provision of law or with material irregularity or by committing some error of procedure in the course of the trial which affected the ultimate decision.

Conclusion: i) If it is proved that summons was duly served but the defendant did not appear then the Court may proceed ex parte and pass decree without recording evidence.
ii) See above in analysis No. ii.
iii) See above in analysis No. iii.
iv) See above in analysis No. iv.
v) The plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action but he may apply for an order to set the dismissal aside.
vi) See above in analysis No. vi.
vii) Before ordering the substituted service, it is imperative for the Court to first be satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way.
viii) The citing of wrong nomenclature of section was not noted, but in our view, it does not change the complexion of the application or the relief claimed in such application if it is clear otherwise from the contents of the application what the applicant actually claimed and prayed for.
ix) The plaintiff may apply within 30 days from the date of dismissal for setting aside dismissal for default of appearance or for failure to pay costs of service of process or to furnish security for costs.
x) Article 181 of the Limitation Act would apply where there is no specific article or limitation is provided in the Limitation Act meant for making any application for setting aside an ex parte order under Order IX Rule 7, CPC.
xi) It is well settled that even if the proceedings are ordered ex parte the defendant may join proceedings at any subsequent stage and file an appropriate application for setting aside ex-parte order with good cause.
xii) Revisional jurisdiction is corrective and supervisory in nature to ensure safe administration of justice.

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27. **Supreme Court of Pakistan**
Karachi Properties Investment Company (Pvt) Ltd v. Habib Carpets (Pvt) Limited
Civil Appeal No.90-K of 2023
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.a._90_k_2023.pdf

Facts: Through this Civil Appeal, appellant has assailed the judgment passed by the High Court, whereby the orders passed by the Rent Controller and Appellate Court were set aside and ejectment application filed by the appellant under Section 15 of the Sindh Rented Premises Ordinance, 1979 was dismissed.

Issues: i) What does "rent" mean and include as per section 2(i) of the Sindh Rented Premises Ordinance, 1979?
ii) What are the niceties of section 5 of the Ordinance in terms of rent agreement and amount of rent?

iii) What does expression *consensus ad idem* connotes?
iv) What would be the effect of absence of *consensus ad idem*?
v) Which terms and conditions ought to be incorporated in rent agreement through express clause?
vi) Whether "maintenance charges" claimed by the landlord, which were admittedly not mentioned in the Lease Deed, come within the definition of "rent" and, in particular, fall within the following words that appear in the said definition: "and such other charges which are payable by the tenant but are unpaid"?
vii) What are the principles regarding upsetting the concurrent findings by the High Court in exercise of writ jurisdiction?

Analysis: i) According to the definition provided under Section 2 (i) of the Ordinance, the expression "rent" includes water charges, electricity charges and such other charges which are payable by the tenant but are unpaid.
ii) The niceties of Section 5 of the Ordinance are somewhat significant wherein it is distinctly provided that the agreement by which a landlord lets out any premises to a tenant should be in writing to accept as proof of the relationship of the landlord and tenant and no landlord shall charge or receive rent in respect of any premises at the rate higher than that mutually agreed upon by the parties, and, if the fair rent has been fixed by the Controller in respect of such premises, at the rate higher than the fair rent.
iii) The expression consensus ad idem is a Latin term that means "agreement to the same thing" or "meeting of the minds". In reality, it connotes the notion that for a contract to be legally binding the parties should have well-defined and flawless insight of the bargain the stipulated terms and conditions of the agreement… The precept of consensus ad idem is rudimentary in the law of contract being an elementary constituent for the execution of a valid contract.
iv) Without consensus ad idem, a contract may not be legally binding and enforceable and in order to substantiate the canons of consensus ad idem, the terms and conditions of agreement should be unequivocal and incontrovertible because any omission, oversight or misrepresentation may result in adverse consequence and repercussions.
v) No doubt in addition to some express terms and conditions of tenancy, certain rights and obligations deem to be implied which if created by fiction of law. However, it is also necessary to incorporate the express clause for the quantum of rent and its due date of payment, utility/amenities charges, and all other charges if agreed to be paid by the tenant under the arrangement of tenancy over and above the monthly rent and payment of utilities bills/charges regularly and it is important to visibly distinguish and identify who is responsible for what charges or dues so there should be no ambiguity or vagueness.
vi) At the outset, before invoking any default in the aforesaid residuary segment, there must be something agreed in writing between the landlord and tenant. Had the condition of making payment for any monthly maintenance charges been

jotted down and agreed between the parties, then of course, that could be considered a binding agreement and the tenant/respondent could not get rid of it without payment and obviously, in the event of default, that cause of action would have been available to the appellant to seek ejectment on the ground of default including the nonpayment of maintenance charges… The expression "such other charges which are payable by the tenant" will not come into field automatically or mechanically to rescue the landlord unless and until the condition of making payment for such charges is itemized in the agreement with proper details. The purpose of this rider is to provide a fair opportunity to the landlord that if, beyond the basic amenities/utilities mentioned in the definition of rent, any facility is made available in the rented premises including the liability to pay maintenance charges, then it should be properly mentioned in the agreement to avoid any doubts or disputes in the future.

vii) The object of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 is to foster justice, preserve rights and to right the wrong. While exercising writ jurisdiction, if the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere; when the finding is based on misreading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, excess or abuse of jurisdiction, and arbitrary exercise of power. Each case is based on its own facts and circumstances. The concurrent findings, if any, recorded by the forum below erroneously may not be considered so revered or untouchable or as gospel truth which cannot be upset, come what may, by the High Court in its constitutional jurisdiction. If some blatant illegalities or violation of law is unearthed or surfaced, the High Court cannot shut its eyes to cover, protect or patronize such defective orders or judgments where interference is really required to advance the cause of justice; and in its fine sense of judgment, may intervene, with the strength of mind that to turn a blind eye to injustice.

Conclusion: i) See above analysis No. i.

ii) See above analysis No. ii.

iii) The expression consensus ad idem is a Latin term that means "agreement to the same thing" or "meeting of the minds".

iv) A contract may not be legally binding and enforceable without consensus ad idem.

v) See above analysis No. v.

vi) See above analysis No. vi.

vii) See above analysis No. vii.

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28. **Lahore High Court**
M/s Future Vision Advertising (Private) Limited v. Federation of Pakistan etc.
W.P. No.77742/2023
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2024LHC2869.pdf

Facts: Through this Constitutional Petition, the petitioner has challenged the show cause notice issued under Section 257 of the Companies Act, 2017 by the Securities and Exchange Commission of Pakistan and order for the appointment of Inspectors to investigate the affairs of the petitioner-company.

Issues: i) Whether the Securities and Exchange Commission of Pakistan can issue show cause notice and initiate proceedings under Section 257 of the Companies Act, 2017 on the basis of a complaint and record available on the website of any company?
ii) Whether the Securities and Exchange Commission of Pakistan has independent power to appoint Inspectors to investigate the affairs of any Company?

Analysis: i) Plain reading of Section 256 and 257 of the Act shows that under aforesaid provisions the investigation into the affairs of the Company can be ordered by the Commission in five different situations. Firstly under Section 256(1)(a) & (b) of the Act, on the application of the members holding not less than one tenth of the total voting power in a Company having share capital or on the application of members not less than one tenth of the total members of a Company not having share capital, where the Commission is of the opinion, that it is necessary to investigate into the affairs of a Company, it may order to investigate and appoint one or more persons as Inspectors to investigate and report thereon in such manner as the Commission may direct. Secondly, under Section 256(1)(c) of the Act, on the receipt of a report under Section 221(5) of the Act by the authorized Officer while inspecting books of accounts and books of papers of the Company or under Section 254(6) of the Act by the Registrar while exercising his power to call for information. However, the word "may" indicates that the aforesaid appointments of Inspectors under Section 256(1) of the Act are discretionary with the Commission and subject to its opinion that investigation is necessary. The provision of Section 257 of the Act relates to investigation of Company's affairs in other cases and the said provision is without prejudice to the power of the Commission under Section 256 of the Act. The third and fourth situation is where under Section 257(1)(a)(i) of the Act, the Company by special resolution or under Section 257(1)(a)(ii) of the Act, the Court by order declares that the affairs of the Company ought to be investigated, the Commission shall appoint one or more competent persons as Inspectors to investigate the affairs of the Company and to report thereon in such manner as the Commission may direct. The word "shall" used for Section 257(1)(a)(i) & (ii) of the Act means that here the Commission has no discretion to form an opinion, rather it is bound to appoint the Inspectors if there is a special resolution by the Company or order of the Court. However, it may prescribe the manner in which the affairs of the Company will be investigated. Fifth situation is under Section 257(1)(b) of the Act, where again by use of word "may", the discretion made available with the Commission to appoint one or more persons as Inspectors to investigate the affairs of the Company and to report thereon if in the opinion of the Commission, there are circumstances suggesting that, the business of the Company is being or has been conducted with

intent to defraud its creditors, members or any other person for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose from the persons who found the Company or its management guilty of fraud, misfeasance, breach of trust or other misconduct towards the company or towards any of its members from carrying on unauthorized business or the affairs of the company have been conducted to deprive the members of reasonable return or members are not given information or shares of the company have been allotted for inadequate consideration or the Company's affairs are not managed in sound business principles or prudent commercial practices or the financial position of the company is such as to endanger its solvency. From the above, it is manifest that besides upon application or report under section 256(1) of the Act, there is independent power available with the Commission under Section 257(1)(b) of the Act to form its opinion on the basis of circumstances suggesting therein for appointment of Inspectors. However, before making any order under Section 257(1)(b) or 256(1) of the Act, the Commission is required to give Company an opportunity of being heard but no such opportunity of statutory show cause is required, while appointing Inspectors under Section 257(1)(b) of the Act on the declaration of Court order or by special resolution of a Company.

ii) The next argument of the learned counsel for the petitioner that the Commission has no independent power to appoint Inspectors but it can only make appointments on the application of the members, receipt of report under Section 221(5) and 254(6) of the Act or on Court order or Company special resolution, is also misconceived. The provision of Section 257(1) of the Act commences with the expression "without prejudice to its power under Section 256, the Commission". It is well settled law that when such expression is used, it means that anything contain in the provision following this expression is not intended to cut down generality of the meaning of the preceding provision. (Refer "P Ramanatha Aiyar's Advance Law Lexicon, Volume 4"). This means that power of the Commission under Section 257 of the Act will not curtail the power of Commission under Section 256 of the Act for the appointment of Inspectors. This legal position is further supported by the fact (as already discussed above) that section 256 of the Act deals with the situations where Inspectors are appointed on the application of the members or report of the authorized Officer or Registrar under Section 221(5) or Section 254 of the Act, whereas under section 257 of the Act, investigation of Company's affairs is in other cases i.e. on special resolution by Company or the Court order or independent power of the Commission when in its opinion the circumstances suggests appointment of Inspectors. It is pertinent to note that both in Section 256(1) and Section 257(1)(b) of the Act, the Commission is to form an opinion before appointment of Inspectors. However, the said opinion under Section 257(1)(b) of the Act must be based upon circumstances suggesting various situations mentioned in Clauses (i) to (vii) of Section 257(1)(b) of the Act, whereas the formation of opinion under Section 256(1) of the Act is not confined only to circumstances suggested in Clauses (i) to (vii) of Section 257(1)(b) of the

Act ibid but Commission has much wide powers to appoint Inspectors if it is necessary to investigate into the affairs of the Company. By using the words "without prejudice to its power under Section 256, the Commission", in Section 257(1) of the Act, the legislation has intentionally not restricted the formation of opinion of Commission under Section 256(1) of the Act only to the circumstances of Clauses (i) to (iv) of Section 257(1)(b) of the Act. Further the use of ";" (Semicolon) before the word "and", in between Sub-Section (1)(a) and sub-Section(1)(b) of Section 257 of the Act, prove that sub-section (1)(a) and (1)(b) of Section 257 of the Act are two independent clauses that are not joined by conjunction. As per "Words and Phrases" Volume 38B" "semicolon" is used to separate consecutive phrases or clauses independent of each other grammatically but dependent alike on some word preceding or following. From the above, it is manifest that Section 257(1)(b) of the Act is a separate clause under which a Commission has independent power to appoint the Inspectors to investigate the affairs of the Company if in its opinion there are circumstances suggesting the situation mentioned in Sub-Section (i) to (vii) of Section 257(1)(b) of the Act.

Conclusion: i) The Securities and Exchange Commission of Pakistan can issue show cause notice and initiate proceedings under Section 257 of the Companies Act, 2017 on the basis of a complaint and record available on the website of any company.
ii) The Securities and Exchange Commission of Pakistan has independent power to appoint Inspectors to investigate the affairs of any Company if in its opinion there are circumstances suggesting the situation mentioned in Sub-Section (i) to (vii) of Section 257(1)(b) of the Act.

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29. **Lahore High Court**
Sher Afzal v. The State etc.
Crl.Misc.No.729-M of 2024
Mr. Justice Sadaqat Ali Khan, Mr. Justice Ch. Abdul Aziz.
https://sys.lhc.gov.pk/appjudgments/2024LHC2860.pdf

Facts: The petitioner, on the same date, was convicted and awarded death sentences in two murder cases. Death sentence of the petitioner in one case was converted into imprisonment for life by the Division Bench of this Court and death sentence of the petitioner in the other case was converted into life imprisonment by the Supreme Court of Pakistan. Thereafter, the other said criminal appeal was disposed of being not pressed by the Supreme Court of Pakistan in order to avail remedy before the High Court by filing of writ petition in view of provisions of Section 397 Cr.P.C. seeking order for both above referred sentences of life imprisonment to run concurrently, hence this petition. Now, the petitioner being convict seeks an order to run concurrently his sentences of imprisonment awarded to him in two different trials of distinct cases.

Issue: What remedy may be availed under the Criminal Procedure Code 1898 in cases where sentences of convict in different trials have not been ordered to run concurrently, rather trials, appellate and revisional courts are silent on this point?

Analysis: It has been clarified in section 397 of the Criminal Procedure Code, 1898, that the Court while analysing the facts and circumstances of every case is competent to direct that the sentences of a convict in two different trials would run concurrently. The provisions of section 397 ibid confer wide discretion on the Court to extend such benefit to the convict in a case of peculiar nature. Thus, construing the beneficial provisions in favour of the convict would clearly meet the ends of justice and interpreting the same to the contrary would certainly defeat the same. The legislation under the provision of section 397 of Code ibid is quite compassionate having tender feelings and has empowered the courts to order the subsequent sentence to run concurrently to the previous sentence of a convict. When the universal principle of law is to be given effect in case of punishment, it is for the Courts to struggle and favour in order to interpret the law where liberty of convict is to be given preference instead of curtailing it without animated reasons and justness.

Conclusion: In cases where sentences of convict in different trials have not been ordered to run concurrently, rather trials, appellate and revisional courts are silent on this point, then in appropriate cases inherit jurisdiction of this Court in terms of section 561-A of the Criminal Procedure Code 1898 read with section 397 of the Code ibid can be invoked, provided where the superior Court of Appeal specifically and consciously has not denied the benefit of provisions of section 397 Cr.P.C.

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30. **Lahore High Court**
Faysal Bank Limited. v. M/s Dynasel Limited and others
COS No.28 of 2014
Mr. Justice Shams Mehmood Mirza
https://sys.lhc.gov.pk/appjudgments/2024LHC2628.pdf

Facts: The suit was brought by the plaintiff bank under the provisions of the Financial Institutions (Recovery of Finances) Ordinance, 2001 seeking recovery from the defendants due under two finance facilities namely Finance Against Trust Receipt (FATR) facility and Running Finance (RF) facility.

Issues: i) Whether an evasive denial of the facts asserted in the plaint amounts to an admission of facts?
ii) What is FATR?
iii) Whether statement of account per se is considered sufficient to charge any person with liability?
iv) Whether the title appearing on the statement of account can determine its nature?
v) What are the parameters under which an agreement between parties to hold trial in a specific court, among multiple courts with jurisdiction, remains valid

under the Code of Civil Procedure?
vi) What is contract of guarantee?
vii) Whether the existence of the debt is fundamental to the surety's liability?
viii) Whether the liability of a surety is co-extensive with that of the principal debtor?
ix) What is "joint and several" contract?
x) How does the principle of joint and several liability, as outlined in the Contract Act, impact the rights and options available to the creditor in case of default by the promisors?
xi) Whether the execution of decree against surety can be postponed till after exhaustion of remedies against principal debtor?
xii) Whether the court while granting leave and framing issues with respect to the disputed amounts, pass an interim decree in respect of any part of claim?

Analysis: i) The plaintiff bank in paragraph 48 of the plaint mentioned the details of the finance documents executed by the defendants. In reply to this paragraph, the defendants in their application for leave to defend gave an evasive reply by stating that "The contents of the previous paragraphs are reiterated here." The defendants, however, nowhere in their application for leave to defend specifically denied execution of the finance documents under the FATR facility. In the case of Saudi Pak Industrial Limited v. B.A Rajput Steel etc 2016 CLD 465, this Court in relation to the requirements of the pleadings held as follows: Notwithstanding the special requirements the Ordinance stipulates the plaintiff and the defendant need to fulfill in their pleadings, the general law on the subject is also not materially different. Order 8 Rules 3, 4 and 5 CPC deal with the manner in which allegations of fact in the plaint should be traversed in the written statement and also the legal consequences that flow from its non-compliance (see Badat & Co. v. East India Trading Co. 1964 AIR 1964 SC 538). It is clearly stipulated in the said Rules that it shall not be sufficient for a defendant to deny generally the grounds alleged by the plaintiff but he must be specific with each allegation of fact. When the defendant denies any fact stated in the plaint, Rule 4 stipulates that he must not evasively answer the point of substance. Similarly, if it is alleged in the plaint that the defendant has received a certain sum of money, it shall not be sufficient for the defendant to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received, and that if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances. It can thus be seen that Rule 4 lays down requirements that are not very different from those that are stipulated in section 10 (4) of the Ordinance. Rule 5 deals with specific denial and clearly lay down that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted against him. In view of the evasive reply of the defendants, they shall be taken to have admitted to having executed the finance documents under the FATR facility.

ii) FATR is a well understood term in the banking context which stands for a facility granted for payment of amounts due, amongst others, under a letter of credit after execution of the trust receipt.

iii) Although section 4 of Banker's Book Evidence Act, 1891 grants presumption of truth to the entries of the statement of account, the said presumption is rebuttable. In the event leave is granted, the entries of the statement of account are required to be proved in accordance with law. In this regard, it may be stated that by virtue of Article 48 of the Qanun-e-Shahadat, 1984 entries in books of account regularly kept in the course of business have been made relevant whenever such entries refer to a matter into which the Court has to enquire but such a statement of account per se is not considered sufficient to charge any person with liability. Under the said provision, such entries though relevant are only corroborative evidence and it is to be proved by further independent evidence. The person on whom the onus lies in required producing relevant evidence in support of the entries in the statement of account.

iv) At this juncture, learned counsel for the defendants points out that the title of the statement of account is "Current Account" and it cannot be construed as statement of RF account. The submission so made by learned counsel for the defendants is not tenable. The title appearing on the statement of account cannot determine its nature.

v) Where two or more courts have jurisdiction to try a suit, the agreement between the parties for holding trial by any such court will not violate the public policy or contravene the provisions of the Code of Civil Procedure provided that court would otherwise also have jurisdiction under the law over the parties and subject matter of the contract.

vi) In the present case, what is in issue is the contract of guarantee that necessarily envisages a pre-existing principal debtor and as such it involves three parties namely the creditor, the principal debtor and the surety in terms of section 126 of the Contract Act. This provision states that a contract of guarantee is a contract to perform the promise, or discharge the liability, of a third person in case of his default. A contract of guarantee, therefore, requires concurrence of three persons namely the principal debtor, the surety and the creditor. Where a guarantor furnishes its guarantee at the request of the principal debtor, there is an implied agreement between principal debtor and guarantor that the latter should be indemnified in respect of its liability toward the creditor.

vii) The existence of a debt is a sine qua non for an action against the surety even if it is separately and independently brought against it. In other words, the foundation or basis of the claim even in the suit against the surety is the liability of the principal debtor. Supposing in an action for enforcement of debt against the surety the defence put up is that there is no default on the part of principal debtor then how would the court adjudicate upon the matter in the absence of latter.

viii) the liability of a surety is co- extensive with that of the principal debtor (…) Section 128 of the Contract Act stipulates that the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the

contract. The word "coextensive" in section 128 refers to the extent to which the surety is liable towards the creditor and simply means that surety shall not be liable for more than what is due from the principal debtor. This provision, however, recognizes that surety may impose limits on restricting its liability by entering into a special contract.

ix) A "joint and several" contract is a contract with each promisor and a joint contract with all, so that parties having a joint and several obligations are bound jointly as one party, and also severally as separate parties at the same time.

x) The principle of joint and several liability, which has its genesis in section 43 of the Contract Act, dictates that in the event of default the creditor may opt for an action joining the promisors together or to pursue either of them individually at its choice. A plaintiff who has obtained judgment against several co-defendants who are jointly and severally liable can take execution proceedings against any one of the co- defendants, or any combination of them or all of them. The legal characterization of the relationship between the parties under a joint and several arrangements is important but perhaps more significant is the nature of the remedy available for breach of obligation. The key difference between joint and several liability relates to the remedy and by extension the mechanics of suing for liability. Put another way, the distinction between 'joint' and 'several' obligations is primarily remedial and procedural in nature [Restatement (Second) of Contracts § 288]. If liability is joint, the plaintiff shall have to bring a single action against all who share liability in the same proceeding. If liability is joint and several, the plaintiff has the option to bring actions against the defendants separately. The Court can of course order to join other persons who share liability if their participation is necessary in the proceedings, which aspect of the matter regarding the principal debtor has already been discussed above.

xi) The explanation to Order II Rule 2 CPC stipulates that an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action. "Collateral" is a term of art and its meaning is well understood generally and in the context of banking. A collateral simply means "….a valuable asset that a borrower pledges as security for a loan" (see https://www.investopedia.com/terms/c/collateral.asp). In Bank of Bihar Ltd. v. Damodar Prasad and another [1969] 1 SCR 620, the Indian Supreme Court was dealing with the question whether the execution of decree against surety can be postponed till after exhaustion of remedies against principal debtor. The following observations notably held the guarantee to be a collateral security. It is the duty of the surety to pay the decretal amount. On such payment he will be subrogated to the rights of the creditor under Section 140 of the Indian Contract Act, and he may then recover the amount from the principal. The very object of the guarantee is defeated if the creditor is asked to postpone his remedies against the surety. In the present case the creditor is banking company. A guarantee is a collateral security usually taken by a banker. The security will become useless if his rights against the surety can be so easily cut down. (Emphasis added) Going by the

Explanation to Order II Rule 2 CPC, the corporate guarantee executed by defendant No.9 is included in, and constitutes part of, the single cause of action to the extent the plaintiff bank seeks to enforce its claim under FATR and RF facilities against all the defendants.

xii) In terms of section 11 of the Ordinance, if the Court is of the opinion at the leave stage that the dispute between the parties does not extend to the whole of the claim or that part of the claim is either undisputed or is clearly due or that the dispute is mainly limited to a part of the principal amount of the finance or to any other amounts relating to the finance, it shall, while granting leave and framing issues with respect to the disputed amounts, pass an interim decree in respect of that part of the claim which relates to the principal amount and which appears to be payable by the defendant to the plaintiff. This provision implies that the dispute on which leave shall be granted must be specified in the leave granting order and that evidence shall only be adduced by the parties on the disputed question of fact.

Conclusions: i) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted against him.

ii) FATR is a well understood term in the banking context which stands for a facility granted for payment of amounts due, amongst others, under a letter of credit after execution of the trust receipt.

iii) The statement of account per se is not considered sufficient to charge any person with liability and such entries, though relevant are only corroborative evidence and it is to be proved by further independent evidence.

iv) The title appearing on the statement of account cannot determine its nature.

v) Where two or more courts have jurisdiction to try a suit, the agreement between the parties for holding trial by any such court will not violate the public policy or contravene the provisions of the Code of Civil Procedure provided that court would otherwise also have jurisdiction under the law over the parties and subject matter of the contract.

vi) A contract of guarantee is a contract to perform the promise, or discharge the liability, of a third person in case of his default.

vii) The existence of a debt is a sine qua non for an action against surety even if it is separately and independently brought against it.

viii) Section 128 of the Contract Act stipulates that the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

ix) A "joint and several" contract is a contract with each promisor and a joint contract with all, so that parties having a joint and several obligations are bound jointly as one party, and also severally as separate parties at the same time.

x) See above analysis No. (x).

xi) It is the duty of the surety being a collateral security to pay the decretal amount. The very object of the guarantee is defeated if the creditor is asked to

postpone his remedies against the surety till after exhaustion of remedies against principal debtor.

xii) Yes, if the Court is of the opinion at the leave stage that the dispute between the parties does not extend to the whole of the claim or that part of the claim is either undisputed or is clearly due or that the dispute is mainly limited to a part of the principal amount of the finance or to any other amounts relating to the finance, it shall, while granting leave and framing issues with respect to the disputed amounts, pass an interim decree in respect of that part of the claim.

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31. **Lahore High Court**
Service Global Footwear Limited and another v. Federation of Pakistan through Secretary Revenue Division and others
ICA No.48745 of 2023
Mr. Justice Shahid Karim, Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2024LHC2738.pdf

Facts: This appeal and a cluster of appeals have assailed the judgment by a learned Single Judge of this Court dismissing a set of constitutional petitions, whereby the section 4C of the Income Tax Ordinance, 2001, in its retrospective application to tax year 2022, was challenged. The impugned judgment upheld the challenge with regard to inherent discrimination which lies in the proviso of Division IIB of Part I of First Schedule of Ordinance ibid and struck down the said proviso. Consequently, the taxpayers who were petitioners before the learned single bench and Federal Board of Revenue have come in separate set of appeals.

Issues: i) Which theory of taxation is basis of section 4C of the Income Tax Ordinance, 2001?

ii) Whether general provisions of a legislation can have retrospective effect?

iii) Whether section 4C of the Income Tax Ordinance, 2001 can be applied to disturb and upend already fixed liabilities and rights consequently created by operation of law?

iv) What is a vested right and right under past and closed transaction?

v) Whether the proviso to Division IIB of Part I of the First Schedule to the Income Tax Ordinance, 2001 is discriminatory and offends Article 25 of the Constitution of Islamic Republic of Pakistan, 1973?

vi) What connotes a Super Tax?

vii) What is the reason for providing the concept of a special tax year in section 74 of the Income Tax Ordinance, 2001?

viii) When the liability to pay income tax accrues?

Analysis: i) Section 4C of the Income Tax Ordinance, 2001, imposed a super tax on high-earning persons for the tax year 2022 and onwards at the rates specified under Division IIB of Part I of the First Schedule to the Ordinance ibid, on income of every person. In fact, the Proviso of Division IIB of Part I of First Schedule to the Ordinance ibid, which was substituted by the Finance Act, 2023 created a separate

class within the class of taxpayers earning income exceeding Rs.300 Million from businesses prescribed therein, irrespective of whether their income exceeded Rs.300 Million.

ii) The principle of legal policy is that "except in relation to procedural matters, the changes in the law should not take effect retrospectively". On the subject of retrospective taxation, the general rule of law requires the courts to always construe statutes as prospective and not retrospective unless constrained to the contrary by the phraseology used. Despite the general principle, the Parliament does have the power to produce a retrospective effect; however, it cannot do so to upset past and closed transactions.

iii) Section 4C of Income Tax Ordinance, 2001 was inserted in the Ordinance ibid through Finance Act, 2022. In the Section 4C of the Ordinance ibid, the words "a super tax shall be imposed for tax year 2022 and onwards" manifest a general provision which gives retrospective effect and ensnares tax year 2022 in the imposition as well.

iv) The term 'vested right' is basically a right that completely and definitely belongs to a person and cannot be impaired or taken away without the persons' consent. The notion of right under past and closed transaction would have proximity to the term 'accrued right'. It would be a right that is ripe for enforcement, against all, including the legislature, and founded on a set of rules having provenance in the Constitution and settled legal principles. It is also a legal right asserting a legally recognized claim against one with a correlative duty to act.

v) Different rates of taxation have been provided in Division IIB of Part I of the First Schedule to the Income Tax Ordinance, 2001. The Proviso to Division IIB of Ordinance ibid identifies and narrows down certain sectors of businesses which allegedly generate windfall profits and to be taxed at a different rate.

vi) This policy statement has ostensibly been prepared to pitch for the imposition of tax under Section 4C of Income Tax Ordinance, 2001 in order to generate additional amount to bridge fiscal gap. For the purpose, super tax on high-earning persons was deemed as the solution being a tax on windfall profits of high-earning persons/taxpayers.

vii) All liabilities that accrue in a tax year are past and closed transactions. Section 20 of the Income Tax Ordinance, 2001 provides deductions in computing income chargeable under the head "income from business" for a tax year. As these considerations shall vary from one business to another depending on its peculiarities, so, that is precisely the reason for providing the concept of a special tax year in section 74 of the Ordinance ibid in contrast with the normal tax year.

viii) Section 137(1) of Income Tax Ordinance, 2001 clearly shows that the tax payable by a taxpayer for a tax year shall be due on the due date for furnishing the taxpayer's return of income for that year. Section 137 of the Ordinance ibid is based on three stages and relates to the assessment of tax while the declaration of liability to pay tax has already been concluded on 30th June of the tax year.

Therefore, the taxable income for the purposes of the Ordinance ibid would stand determined on that date.

Conclusion: i) The section 4C of the Income Tax Ordinance, 2001, embodies the theory of taxation based on ability to pay.
ii) The general provisions of a legislation cannot retrospectively affect the past and closed transactions, unless the law clearly states that it is intended to affect such past and closed transactions.
iii) In the absence of a clear intention on the part of the legislature, Section 4C of the Income Tax Ordinance, 2001 cannot be applied to disturb and upend already fixed liabilities and rights consequently created by operation of law.
iv) The vested right' is basically a right that completely and definitely belongs to a person while right under past and closed transaction implies a right to inhere in a person on a transaction becoming past and closed.
v) The proviso to Division IIB of Part I of the First Schedule to the Income Tax Ordinance, 2001 is discriminatory and offended Article 25 of the Constitution 1973.
vi) Super Tax is a higher rate of tax to be imposed on windfall profits of high-earning persons/taxpayers whose income exceeded Rs.300 Million in respect of prescribed sectors.
vii) The reason for providing the concept of a special tax year in section 74 of the Income Tax Ordinance, 2001 is to create ease in computing income chargeable under the head "income from business", which vary from one another.
viii) The liability to pay income tax accrues on the last day of the income year.

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32. **Lahore High Court**
Syed Asif Hussain Shah v. Federation of Pakistan and others
W.P. No. 167 Of 2024
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2024LHC2988.pdf

Facts: The respondent no. 04 filed suit for dissolution of marriage and trial court decreed the suit on failure of reconciliation proceedings. The petitioner has challenged the vires of this order and also called in question the vires of proviso to sub-sections 4 & 5 of section 10 of the Family Courts Act, 1964 being contrary to Articles 4, 8, 9 & 10-A of Constitution.

Issues: i) How many ways are permitted by Islamic injunctions for dissolution of marriage between spouses?
ii) What is khula?
iii) Whether khula and dissolution of marriage under Dissolution of Marriage Act, 1939 are different?
iv) Whether a woman can seek khula if she has fixed aversions to her husband?
v) What is scope and import of word "reconciliation" used in Section 10(5) of the Family Courts Act, 1964?
vi) Whether Family Court can compel a party for reconciliation against his/her

will?

vii) Whether any shatter can be placed upon the power of the Family Court to dissolve the marriage on the basis of "khula", when reconciliation is not possible?

Analysis: i) After going through the Islamic injunctions it can be observed with all clarity that Islam permits dissolution of marriage between Muslim spouses in three ways i.e. Talaq, Mubarat and khula. Needless to reiterate that Talaq is an arbitrary and unilateral act of the husband, whereby, he may divorce his wife. Mubarat on the other hand is one of the forms of dissolution of marriage whereunder spouses may agree to part their ways through mutual consent. Contrary to both, a Muslim woman is also vested a right to obtain divorce through the court of law by instituting a suit, which is termed as "khula".

ii) "Khula" denotes the right of a Muslim woman to seek dissolution of her marriage in which she gives or consents to give a consideration to the husband for her release from marriage as determined by the court. In addition, Section 2 of The Dissolution of Muslim Marriages Act, 1939 (hereinafter referred to as "Act, 1939) lays down the grounds on which a Muslim woman can seek a decree for dissolution of marriage.

iii) There is, however, a mark distinction between dissolution of marriage through "khula" under the "Act, 1964" and "Act, 1939"… In addition, Section 2 of The Dissolution of Muslim Marriages Act, 1939 (hereinafter referred to as "Act, 1939) lays down the grounds on which a Muslim woman can seek a decree for dissolution of marriage. "Khula" and dissolution of marriage under the "Act, 1939" operate under entirely different legal systems, leading to distinct outcomes as well.

iv) A woman can seek "khula" from the court as of right if she has fixed aversions to her husband.

v) From the collective analysis of dictionary meaning of "Reconciliation", we can infer that its true import is to bring an end to the differences through meaningful and concrete effort. In other words, word "reconciliation" postulates adoption of such measures as can be proved as a factor for harmonious union between the spouses after redress of grievances which had led them to have recourse to litigation.

vi) Subsection (3) of Section 10 of the "Act, 1964" though postulates that the Family Court may, at the pre-trial stage, ascertain the points of controversy between the parties and attempt to effect compromise between them but neither the "Act, 1964" nor the rules framed thereunder provides any procedure for the said purpose. It has been thus left to the discretion of the Family Court to do so, keeping in view the peculiar facts and circumstances of each case. Even otherwise, no hard and fast rules can be laid to bound down the Family Court to strictly follow the same for the purpose of effecting compromise or bringing reconciliation between the parties. A Family Court cannot compel a party for reconciliation against his/her will. It may not be difficult for someone to take the horse to the water but at the same time he cannot make him drink. Law only

requires from a Family Court to make a genuine and concrete attempt for reconciliation between the parties.
vii) Sub-Sections (3) and (5) are interlinked and none can be read in isolation to the other. Section (5) of Section 10 of the "Act, 1964" commands the Family Court to immediately pass a decree for dissolution of marriage on failure of reconciliation proceedings. No shatters thus can be placed upon the power of the Family Court to dissolve the marriage on the basis of "khula", when reconciliation is not possible.

Conclusion: i) Islam permits dissolution of marriage between Muslim spouses in three ways i.e. Talaq, Mubarat and khula.
ii) See analysis no. ii.
iii) "Khula" and dissolution of marriage under the "Act, 1939" operate under entirely different legal systems, leading to distinct outcomes as well.
iv) See analysis no. iv.
v) Word "reconciliation" postulates adoption of such measures as can be proved as a factor for harmonious union between the spouses after redress of grievances which had led them to have recourse to litigation.
vi) Family Court cannot compel a party for reconciliation against his/her will.
vii) No shatters can be placed upon the power of the Family Court to dissolve the marriage on the basis of "khula", when reconciliation is not possible.

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33. **Lahore High Court**
Lahore Development Authority through its Director General and another v. Chaudhary Hamayun Mahmood and another
W.P.No.8177/2023
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2024LHC2971.pdf

Facts: Through this constitutional petition, the petitioners/Lahore Development Authority has challenged the validity of order passed by the Commissioner, Lahore Division, Lahore who accepted the application of the respondent No.1 and de-notified the acquired land.

Issues: i) Whether under section 48 of the Land Acquisition Act 1894, the Commissioner has any jurisdiction to issue declaration regarding de-acquisition of an acquired land of whose possession has not been taken?
ii) Can any transaction of sale made by ex-owner after issuance of notification and award thereof under Land Acquisition Act 1894 convey any right or title in favour of the subsequent purchaser?

Analysis: i) The main controversy in this petition is that as to whether under the land acquisition enactment, the Commissioner has any jurisdiction to issue declaration regarding de-acquisition of an acquired land, suffice it to say that as per Section 48(1) of the Land Acquisition Act 1894, the government has the power to

withdraw from acquisition of any land of whose possession has not been taken….. As expounded from the above provision, the Commissioner has no jurisdiction to exclude the acquired land under the Land Acquisition Act, 1894 rather it is only the Government who is shown competent to de-acquire the land.

ii) Even otherwise, notification under Section 4 of the Act ibid of land in question was issued on 28.04.2003, notification 17(4) and 6 of the Act ibid was issued on 04.07.2003 whereas award was issued on 24.10.2003 but the respondent No.1 purchased the land falling in Khasra Nos.635 & 636 through registered sale deed No.50915 dated 03.10.2011 in Moza Bhobatian and mutation No.664 was incorporated in the revenue record, whereas at the time of entering into sale transaction exowner/ vendor was not holding any title of the land as after acquisition, title of the land vested free from all encumbrances in favour of the petitioner/ LDA whereafter no sale transaction of the said land could be made by ex-owner and even if any transaction of sale was made by ex-owner after issuance of notifications and award whereof, that transaction could not convey any right or title in favour of the subsequent purchaser. The issuance of notifications under Land Acquisition Act, 1894 was a caution for public to stay away from entering into any sale/purchase transaction subsequent to the issuance of the notification and if any alienation is made then it would be at the risk and cost of the said vendee.

Conclusion: i) Under section 48 of the Land Acquisition Act 1894, the Commissioner has no jurisdiction to issue declaration regarding de-acquisition of an acquired land of whose possession has not been taken.

ii) Any transaction of sale made by ex-owner after issuance of notification and award thereof under Land Acquisition Act 1894 cannot convey any right or title in favour of the subsequent purchaser.

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34. **Lahore High Court**
Tahir Mehdi Imtiaz Ahmad Warraich v. Government of Punjab through Secretary, Home Department etc.
Press Appeal No.225/2012
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2024LHC2615.pdf

Facts: Through this appeal under Section 20 of the Press, Newspapers, News Agencies, and Books Registration Ordinance 2002, the appellant has challenged the validity of the order passed by the District Coordination Officer, who, while invoking jurisdiction under Section 19 of the Ordinance ibid, cancelled the declaration in respect of Monthly monthly magazine "Misbah" and the appellant/ printer was directed to stop the circulation of the said magazine.

Issues: i) Can conditions be imposed on the right to freedom of speech and expression as well as freedom of the press?

ii) What are the parameters for cancellation of declaration of a newspaper?

iii) Whether Government is competent to forfeit any publication?

Analysis: i) Under Article 19 of the Constitution of the Islamic Republic of Pakistan, 1973 [hereinafter referred to as "Constitution"], every citizen has a right of freedom of speech and expression as well as freedom of the press but said rights can only be enjoyed subject to the conditions imposed in the said Article as well as the law…As the matter in issue relates to the publication of a magazine which publication falls within the domain of "press" and the Article ibid while guaranteeing the freedom of press gives authority to impose restriction in accordance with law. For press entities, an Ethical Code of Practice has been given in the Schedule of the Press Council of Pakistan Ordinance, 2002…The crux of the aforesaid Ethical Code of Practice is that no one including "press" is allowed to violate the honor of any individual and the state of Pakistan as well as the religion of Islam. Further, Section 5 of the Press, Newspapers, News Agencies and Books Registration Ordinance 2002 deals with the directions regarding publishing material in the publication whereas Section 6 of the Ordinance ibid directs the printer to submit declaration with the undertaking to abide by the aforementioned Ethical Code of Practice…

ii) Under Section 19 of the Press, Newspapers, News Agencies and Books Registration Ordinance 2002, the parameters for cancellation of declaration of a newspaper are given…The appellant while obtaining the declaration of magazine, submitted his affidavit-cum-undertaking to abide by the provisions of the Ordinance ibid as well as the Rules and Regulations made thereunder but subsequently he has committed blatant grave violations to the aforesaid declaration. However, as an abandoned caution, the Chief Minister, Punjab constituted Muthida Ulma Board Punjab to ascertain regarding preaching of objectionable material. The said Board in its meeting after perusing the contents of the magazine, recommended for cancellation of its declaration on the ground of publishing objectionable material…In this regard, Home Department, Government of the Punjab issued a notification by holding that the magazine contains a deliberate mischief of malicious and objectionable material…The Home Department, Government of the Punjab issued direction to the District Coordination Officer and recommended for cancellation of declaration of magazine for publishing objectionable material…In view of the aforesaid facts, a show cause notice under Section 19 of the Press, Newspapers, News Agencies and Books Registration Ordinance 2002 was issued to the appellant with the allegation that the magazine is being used to preach the teachings of Qadiani group which practice is prohibited under Section 298-C PPC…The aforesaid reply given by the appellant shows that he neither controverted the allegations levelled against him nor explained about his stance rather made an evasive denial by stating that nothing objectionable is being printed in the magazine. The District Coordination Officer on the basis of aforesaid facts of the case and after providing opportunity of hearing to the appellant, passed a well-reasoned order and the reasons mentioned in the said order could not be rebutted by the learned counsel for the appellant…

iii) Furthermore, under Section 99-A of Criminal Procedure Code (Cr.P.C.), 1898, the Government is competent to forfeit any publication if it is satisfied that such publication contains objectionable material as prescribed in law.

Conclusion: i) Conditions can be imposed on the right to freedom of speech and expression as well as freedom of the press under Article 19 of the Constitution as well as the law.
ii) See above analysis No. ii.
iii) Under Section 99-A of Criminal Procedure Code, 1898 the Government is competent to forfeit any publication if it is satisfied that such publication contains objectionable material as prescribed in law.

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35. **Lahore High Court**
M/s Team Packages and others v. MCB Bank Limited
Execution First Appeal No.13 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2024LHC2677.pdf

Facts: This appeal under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 whereby the appellants assailed the order passed by the Judge Banking dismissing objection petition of the appellants with regard to the determination of the cost of funds.

Issue: Is the explanation contained in Section 10(4) of the Ordinance applicable for the purpose of appropriation of cost of funds decreed under Section 3 of the Financial Institutions (Recovery of Finances) Ordinance, 2001?

Analysis: A suit for the recovery of finances instituted by the financial institutions can be defended only with leave of the Court as required under Section 10 of the Ordinance, which prescribes limitation, procedure and the form in which such leave is to be sought… The explanation in Section 10(4) of the Ordinance is expressly and exclusively for application thereof to clause (b) of the said sub-section to seek leave to defend a suit for recovery instituted by a financial institution. The requirement under Section 10(4)(b) of the Ordinance to specifically state the amount of finance and other amounts relating to finance payable by the defendant to the financial institution is for the period upto the date of institution of the suit, which is essentially for the purpose of determining liability for passing a decree. …Once a decree is passed, the financial institution has no discretion to appropriate the amount paid against other amounts including cost of funds. All repayments made by a judgment-debtor after passing of the decree have to be first adjusted towards decretal amount and surplus towards cost of funds. Conversely, if the option to adjust cost of funds is extended to the decree holder/Bank, it would always prefer to appropriate amounts paid for the adjustment of decretal amount towards cost of funds first to maintain outstanding claim of decree as a source of generating income perpetually, which would defeat the scheme and spirit of the Ordinance, including Section 3 thereof. …Indeed,

Section 10(4) of the Ordinance does not have any connection whatsoever with cost of funds, which obligation accrues once liability towards the financial institution is determined when the decree is passed. …Furthermore, execution of decree passed by a Banking Court is governed by Section 19 of the Ordinance which contains no provision for applicability of the explanation contained in Section 10(4) ibid. Likewise, Section 3 of the Ordinance which prescribes duty of a customer to pay cost of funds of the financial institution makes no reference to the application of above explanation either.

Conclusion: Execution of decree passed by a Banking Court is governed by Section 19 of the Financial Institutions (Recovery of Finances) Ordinance,2001 which contains no provision for applicability of the explanation contained in Section 10(4) ibid. Likewise, Section 3 of the Ordinance which prescribes duty of a customer to pay cost of funds of the financial institution makes no reference to the application of above explanation either.

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36. **Lahore High Court**
Iftikhar Ahmad v. Muhammad Anwar, etc.
C.R. No.20763 of 2024
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC2864.pdf

Facts: Through instant Petition, petitioner assailed vires of order passed by appellate Court, whereby application of respondent for amendment of the pleadings was allowed and consequently, Trial Court's consolidated judgment and decree was set aside and matter was remanded.

Issues: i) Whether a court may grant consequential relief if the same is not prayed for in a suit for declaration?
ii) Where may pleading amendments be allowed?
iii) When may amendments to the pleadings be allowed?
iv) What is the rule regarding permitting amendments in the pleadings at the stage of appeal or revision?
v) Would an amendment in the relief change the nature of the suit?

Analysis: i) The natural result of declaration if succeed, would be that consequential relief has to be given by the Court even same was not claimed and the Court in such circumstances is bound to call upon the party to amend the plaint to the extent of possession and direct him to pay the Court-fee.
ii) Amendment in pleadings may be allowed where it avoids multiplicity of suits, does not alter the subject matter or cause of action, does not take away any accrued right, entitles the plaintiff to further relief due to subsequent events, amplifies the cause of action, serves the interests of justice, triggers a new statutory line of defense due to the plaintiff's evidence, causes no injustice, or addresses an inadvertently omitted relief. However, this list is not exhaustive.
iii) Order VI, Rule 17, C.P.C. contemplates that the Court may at any stage of the

proceedings allow the parties to alter or amend the pleadings in such manner as may be just and all amendments which may be necessary for the purpose of determining the real question in controversy between them. It is settled rule that the application under Order VI, Rule 17, C.P.C. can be entertained and allowed at any stage of the proceedings if the same is necessary for effective decision thereof.

iv) Amendment can be allowed while ignoring delay whatsoever, even at any stage of proceedings in the trial, and in certain cases amendments can be permitted at the stage of appeal or even in the revisional jurisdiction, however, keeping in view the beneficial rule, that proposed amendment is expedient for the purpose of determining the real questions in controversy between the parties and it is not changing the nature of pleadings.

v) An alteration in the relief does not ordinarily change the character or substance of the suit if it is based on the same averments, and if such an amendment is allowed, no injustice could be done to the other party. It is also well-established tenet that pursuant to Order VI, Rule 17 CPC, amendments to pleadings are permissible at any juncture of the legal proceedings, provided they serve to crystallize the substantive issues at hand without transmuting the fundamental character of the original pleadings.

Conclusion: i) If suit for declaration is successfully proved, the outcome would entail the Court granting consequential relief, even if it was not specifically requested.

ii) See above analysis No. ii.

iii) The Court may, at any stage of the proceedings, allow the parties to alter or amend the pleadings in such manner as may be just.

iv) Amendment can be permitted at the stage of appeal or even in the revisional jurisdiction, however, keeping in view the beneficial rule.

v) See above analysis No. v.

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37. **Lahore High Court**
National Highway Authority, Islamabad through its Project Director Zafar Mehmood v. Muhammad Afzal Bhatti & another
RFA No.20881 of 2023
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2024LHC2886.pdf

Facts: Through instant appeal, appellant challenged judgment dated passed by learned Senior Civil Judge, whereby Reference Application under Section 18 of the Land Acquisition Act, 1894, filed by respondent No.1, was accepted and he was held entitled to get compensation of acquired land @ Rs.20,00,000/- per Acre along with 15% compulsory acquisition charges, compound interest @ 8% from the date of possession i.e. date of issuance of Notification u/s 4 of the Act of 1894 till payment of compensation with interest and costs of the suit.

Issues: i) Can documentary evidence be exhibited in the statement of counsel?

ii) Would the document exhibited solely through the statement of counsel without the opportunity for cross-examination meet the legal standards for admissibility of evidence?

Analysis: i) The Referee Court has taken into consideration the market value, potentiality and value of the adjacent lands on the basis of documentary evidence tendered by respondent No.1, which clearly shows value / price of adjacent lands on higher side. However, the Apex Court of the country has laid down in a number of judgments that documentary evidence cannot be exhibited in the statement of counsel…… The verdict given by the Supreme Court is binding on all Courts of the country within the contemplation of Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973.

ii) Needless to say that the concept that documents cannot be admitted into evidence solely through the statement of counsel during evidence is rooted in the fundamental right to cross-examination, which is an essential aspect of the adversarial legal system. The right to cross-examination allows the opposing party to challenge the veracity, authenticity, and relevance of the evidence presented, including documents. If documents were to be admitted solely on the statements of counsel, it would indeed compromise the right of the other party to cross-examine, which is not warranted by law. Therefore, the trial Courts must ensure that all documentary evidence is subject to the scrutiny of cross-examination to uphold the principles of fairness and due process. Documents exhibited solely through the statements of counsel without the opportunity for cross-examination would not meet the legal standards for admissibility of evidence. This ensures the integrity of the judicial process and the rights of the parties involved. The superior Courts of the country have also enriched the law through their judgments, setting precedents for the proper admission of documents and evaluation. The Courts must ensure so far as it is possible that these legal standards are met to maintain the integrity of the judicial process and uphold the rights of the parties involved.

Conclusion: i) Documentary evidence cannot be exhibited in the statement of counsel.

ii) The document exhibited solely through the statement of counsel without the opportunity for cross-examination would not meet the legal standards for admissibility of evidence.

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38. **Lahore High Court**
Ghazanfar Amin v. Province of Punjab and others
Writ Petition No. 7027/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2024LHC2905.pdf

Facts: Respondent No.4 owned a piece of land. He appointed Respondent No.5 as his General Attorney in respect of the said land through General Power of Attorney. However, the Respondent No.4 personally executed an Exchange Deed rather than through his General Attorney (Respondent No.5). Consequent upon this

exchange, the Petitioner became the owner certain land. The land was duly mutated in his favour in the revenue record. However, when he applied to the Halqa Patwari for *Fard Malkiat*, he refused to issue the same on the grounds that the Audit Officer had pointed out that Respondent No.4 had not paid the Capital Value Tax (CVT), payable on General Power of Attorney executed by him in favour of Respondent No.5.

Issues: i) Whether the two expressions: "aggrieved party" and "aggrieved person" as used in Article 199 of the Constitution conveys distinct meanings?
ii) Whether CVT is chargeable on every power of attorney in terms of section 6(3) of the Punjab Finance Act, 2012?

Analysis: i) The High Court's power of judicial review under Article 199 of the Constitution is an original jurisdiction conferred by the Constitution. However, this power is *inter alia* subject to the condition that no other adequate remedy is provided by law. Further, in respect of the matters mentioned in clauses (i) and (ii) of Article 199(1)(a), the High Court must be moved by an aggrieved party while any person may approach it for an order under clauses (i) and (ii) of Article 199(1)(b). As for the matters falling within the ambit of Article 199(1)(c), it can exercise jurisdiction only on the application of an aggrieved person. It is important to note that Article 199 has used two expressions: "aggrieved party" and "aggrieved person". The rule of interpretation is that when the legislature uses two different terms, the intention is to convey distinct meanings.
ii) In section 6(3) of the 2012 Act, the legislature talks about the acquisition of immovable property and has used the term "power of attorney" alongside other methods such as purchase, gift, exchange, surrender, relinquishment, and lease. This suggests a shared context among these terms. By applying the *noscitur a sociis* principle, it can be inferred that the legislature intended to impose CVT specifically on a general power of attorney when an individual acquires immovable property through it and not otherwise. Traditionally, the transfer of ownership for immovable property involves a registered instrument, as mandated by the Registration Act of 1908. This instrument needs registration with the Registrar of Documents, requiring payment of stamp duty under the Stamp Act and a registration fee. While this process is generally straightforward, an alternative method has emerged in recent years, moving away from the Registrar of Documents. This alternative facilitates private property transfers using documents like transfer letters, agreements to sell, and power of attorneys. In this alternative approach, the buyer obtains possession of the property and uses it like an owner. This deviation aims to lower transactional costs and taxes, promoting a higher turnover of properties for investment. Despite lacking formal legal recognition, this practice has been adopted by entities such as cooperative housing societies, statutory authorities, limited liability companies, and even private individuals, capitalizing on significant financial benefits and convenience…. CVT may not always be chargeable under section 6(3) of the 2012 Act on every power of attorney. Consequently, an individual is entitled to show that he is not liable to

pay the tax in a particular case.

Conclusion: i) The two expressions: "aggrieved party" and "aggrieved person" as used in Article 199 of the Constitution convey distinct meanings.
ii) CVT is not chargeable on every power of attorney in terms of section 6(3) of the Punjab Finance Act, 2012.

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39. **Lahore High Court**
M/s AG Signs (Pvt.) Ltd. v. Gashoo Advertiser
Civil Revision No.449-D of 2017
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2024LHC2894.pdf

Facts: The Petitioner has filed this Civil Revision under Section 115 of the Code of Civil Procedure, 1908 challenging judgment and decree of the Appellate Court dismissing relevant appeal and upholding the judgment and decree passed by the learned trial Court. Besides, the Petitioner has also challenged order, whereby his right to produce evidence was closed by the learned trial court.

Issues: i) Whether a party may seek favour of law after not producing evidence despite being provided with numerous opportunities through repeated orders of the Court in this regard?
ii) What is the scope of the Civil Revision under Section 115 of the Civil Procedure Code, 1908 preferred against concurrent findings of facts recorded by courts below?

Analysis: i) Under Order XVII, Rule 1(1) of the Code of Civil Procedure, 1908, the trial Court is vested with powers to adjourn the hearing of a case on showing sufficient cause by either of the party and Rule 1(2) of the said Order empowers the Court seized of the matter to fix a day for further hearing of the suit subject to costs occasioned by the adjournment. Order XVII, Rule 3 of the Code ibid empowers the Court to proceed to decide the suit forthwith if a party, to whom time has been granted, fails to produce evidence, secure the attendance of witnesses, or perform any other act necessary for the further progress of the suit.
ii) If the Revision Petition does not point out any illegality, material irregularity, mis-reading or non-reading in the concurrent findings of facts recorded by the both the Courts below, then the revisional jurisdiction cannot be exercised to re-appraise the evidence in order to devise an inference other than the Courts below.

Conclusion: i) If a party does not produce evidence despite being provided with numerous opportunities through repeated orders of the Court, then such like indolent party cannot seek favour of law, because law favours the vigilant and not the indolent.
ii) The revisional powers are limited and can only be exercised when the Revision Petitioner succeeds in establishing that the impugned judgment suffers from legal infirmities hedged in Section 115 of the Civil Procedure Code, 1908.

40. **Lahore High Court**
Golden Jubilee Cooperation Society v. Secretary Cooperative etc.
Writ Petition No.74 of 2024
Mr. Justice Jawad Hassan.
https://sys.lhc.gov.pk/appjudgments/2024LHC2699.pdf

Facts: The Petition filed by one of the Respondents under Section 54 of the Cooperative Societies Act, 1925 was allowed by the concerned Circle Registrar, Cooperative Society, directing the Petitioner Housing Society to transfer the subject plot in favour of said Respondent. The Petitioner filed appeal before the concerned Secretary to the Government of Punjab, Cooperative Department, which was dismissed vide impugned order, hence this petition.

Issue: Whether a housing society may decline transfer of a plot in favour of subsequent purchaser from original member, whilst applying Section 17 of the Cooperative Societies Act, 1925, on account of his violation of sale agreement in connection with some other plot of the said society?

Analysis: If a plot is purchased by subsequent purchaser from original member of housing society after payment of full consideration and he has taken possession thereof as well as subject plot is not under any litigation, then the provisions of the Section 17 of the Cooperative Societies Act, 1925 are not attracted. In addition, Article 23 of the Constitution of Islamic Republic of Pakistan, 1973 guarantees that every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest. Further, Article 24 of the Constitution ibid guaranteed protection of property rights.

Conclusion: A housing society cannot decline transfer of a plot in favour of subsequent purchaser from original member in case where he has taken possession of subject plot after payment of full consideration and same is not under any litigation.

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41. **Lahore High Court**
Government of the Punjab, etc. v. Muhammad Ahmad
ICA No. 37 of 2022
Mr. Justice Muzamil Akhtar Shabir, Mr. Justice Muhammad Waheed Khan, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2024LHC2683.pdf

Facts: Respondent applied and competed for initial appointment, against the post of Sub-Inspector, advertised by the PPSC vide public advertisement. Respondent was got medically tested and found suffering from partial color blindness, who was declared unfit and held disqualified for the post in question. The respondent filed writ petition which was allowed and Police department was directed to consider respondent for appointment as Sub-Inspector, hence this intra court appeal. Instant

appeal was placed before larger Bench, in wake of the observations recorded by learned Division Bench.

Issues: i) Whether the Sub-Inspectors and Inspectors (Appointment and Conditions of Service) Rules, 2013, and conditions prescribed therein, have to be treated and read as exhaustive or all-inclusive conditions, admitting of no other qualifications/conditions?

ii) Whether absolute exclusivity can be extended to the minimum qualifications in the schedule to the Rules 2013 by virtue of Rule 14 of the Rules 2013, in the context of other requisite qualifications?

iii) Whether recruit can claim absolute entitlement to the appointment against post simply claiming fulfillment of minimum qualifications in the Schedule to the Rules 2013?

iv) Whether restrictive or exclusionary interpretation can be attributed to the Rules 2013 and any inconsistency can be claimed in the context of vision standards prescribed under Notification of 1965?

v) Whether requirement(s) of "good muscle-balance, visual fields and colour vision, night vision and binocular vision" per se stood excluded for being not appearing in the schedule to the Rules 2013?

vi) Whether notice under Rule 9-A, Part A(a), Chapter 1, Volume V of Rules and Orders of the Lahore High Court, Lahore is extremely essential if the cut date for removal of objection falls in the midst of Court's winter vacation?

vii) Whether government can be deprived of entitlement to notice under Rule 9-A, Part A(a), Chapter 1, Volume V of Rules and Orders of the Lahore High Court, Lahore?

Analysis: i) At first blush and upon threadbare analysis, textual reading of Rule 14 of the Sub-Inspectors and Inspectors (Appointment and Conditions of Service) Rules, 2013 clearly suggests that over-riding effect provided in terms thereof is not absolute but cautiously qualified – seemingly limited and preference extended to the extent of any inconsistency, if found qua Chapters 12 and 13 of Police Rules, 1934. Rules 13 and 14 of the Rules 2013 complement each other, which require conjunctive reading… We repel the argument that identification of bare minimum qualifications in the advertisement and non-disclosure of each and every qualification or disqualification in the Rules 2013 would imply exclusion of all other conditions, which otherwise form part and parcel of requirements for determining medical fitness. In essence, conditions, in addition to those minimally prescribed in the Rules 2013, are characterized as supplemental or incidental conditions and vision standards, provided in the Notification of 1965, constitute supplemental / incidental conditions – to be read as part and parcel of the Rules 2013 and for that matter Rule 12.16 of the Police Rules 1934. In brief, claim of exclusion of vision standards in Notification of 1965 manifest erroneous construction of Rule 14 of the Rules 2013, when no inconsistency is otherwise found.

ii) Argument by respondent's counsel that absolute exclusivity was extended to

the minimum qualifications in the schedule by virtue of Rule 14 of the Rules 2013, in the context of other requisite qualifications, is wrong on two-counts. Firstly, absolute exclusion of other conditions, available and attracted in terms of Rule 12.16 of the Police Rules 1934 and appendix thereto was neither intended nor any such effect could be extended while undertaking recruitment, unless any particular requirement under Chapter 12 of the Police Rules 1934 is found contrary to the qualifications identified in the schedule to the Rules 2013. Expression "these rules shall have effect notwithstanding anything contrary contained in Chapters 12 and 13 of the Police Rules 1934" must be accorded due deference, as long as Rules are not amended to otherwise limit or expand the scope of inconsistency(ies). Hence, overriding effect is restricted to the extent of inconsistency and not otherwise. Mere non-mentioning of any qualification, otherwise identified in the Rule 12.16 and appendix thereto or in the Notification of 1965, could not be construed as conscious omission. Evidently, Rules 2013 are not a complete code in itself. Secondly, alternate plea that indication of express conditions entails implied repeal of the requirements under Rule 12.16 of the Police Rules 1934 is also without substance. No question of implied repeal arose upon textual reading of Rule 14 of the Rules 2013. Argument is otherwise illogical.

iii) No recruit could claim absolute entitlement to the appointment against post under reference, simply upon claiming fulfillment of minimum qualifications in the schedule to the Rules 2013. It is reiterated that qualifications prescribed in the schedule constitute bare minimum requirements, which have to be read in conjunction with other applicable qualifications, not otherwise inconsistent. Bare recommendations by the Commission were not enough to secure appointment, unless medical fitness of the recruit is certified in terms of Rule 12.16 of the Police Rules 1934.

iv) Rule 12.16 of Police Rules 1934 and appendix thereto talk of mandatory requirement of the medical certificate, before declaring candidate eligible and fit for the post – and medical certificate requires affirmation of the vision standards. Let's examine a hypothetical situation. No particular reference to any ailment was provided in the schedule to the Rules 2013 or Rule 12.16 of the Police Rules 1934. Does mere non-mentioning of a particular ailment would suggest that any prospective candidate, though suffering from said ailment, considered a disability for appointment to government service or for that matter police department, which ailment was discovered upon conduct of post-approval medical examination, could claim entitlement to the appointment on the premise that such ailment was not identified in the minimum qualifications. No such restrictive or exclusionary interpretation could be attributed to the Rules 2013, provided any inconsistency is found. Even otherwise no inconsistency could be claimed in the context of vision standards prescribed under Notification of 1965.

v) If we go by the erred construction of the Rules 2013, proposed by learned counsel for respondent, which claimed that requirement(s) of "good muscle-balance, visual fields and colour vision, night vision and binocular vision" per se

stood excluded for being not appearing in the schedule to the Rules 2013, and such disabilities, as identified in the Notification of 1965, are not attracted. This implies that even a person with poor night vision could claim entitlement to enrolment on the premise that no particular reference to such defect in the vision was found in the advertisement or the Rules 2013. This construction is fallacious, even bordering absurdity.

vi) Record is examined, which depicts that appeal against order of 06.12.2021 was initially filed on 23.12.2021, wherein various office objections were raised, and seven days were allegedly allowed for removal of objections… if seven days were considered to be granted for removal of office objection on 23.12.2021, then same had to be removed by 31.12.2021, which cut-off date fell in the midst of Court‟s winter vacation. This aspect makes the requirement of notice under Rule 9-A, Part A(a), Chapter 1, Volume V of Rules and Orders of the Lahore High Court, Lahore extremely essential.

vii) If private person is held entitled to notice in terms of Rule 9-A, Part A(a), Chapter 1, Volume V of Rules and Orders of the Lahore High Court, Lahore, government cannot be deprived of this treatment.

Conclusion: i) Rules 2013, and conditions prescribed therein, cannot be treated and read as exhaustive or all-inclusive conditions, admitting of no other qualifications / conditions.

ii) Absolute exclusivity cannot be extended to the minimum qualifications in the schedule to the Rules 2013 by virtue of Rule 14 of the Rules 2013, in the context of other requisite qualifications.

iii) Recruit cannot claim absolute entitlement to the appointment against post simply claiming fulfillment of minimum qualifications in the Schedule to the Rules 2013

iv) Restrictive or exclusionary interpretation cannot be attributed to the Rules 2013 and no any inconsistency can be claimed in the context of vision standards prescribed under Notification of 1965.

v) Requirement(s) of “good muscle-balance, visual fields and colour vision, night vision and binocular vision” cannot per se stood excluded for being not appearing in the schedule to the Rules 2013.

vi) Notice under Rule 9-A, Part A(a), Chapter 1, Volume V of Rules and Orders of the Lahore High Court, Lahore is extremely essential if the cut date for removal of objection falls in the midst of Court’s winter vacation.

vii) Government cannot be deprived of entitlement to notice under Rule 9-A, Part A(a), Chapter 1, Volume V of Rules and Orders of the Lahore High Court, Lahore.

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42. **Lahore High Court**
National Bank of Pakistan and 04 others Vs. Mumtaz Ahmad
I.C.A. No. 85 of 2024
Mr. Justice Muzamil Akhtar Shabir, Mr. Justice Ahmad Nadeem Arshad
https://sys.lhc.gov.pk/appjudgments/2024LHC2943.pdf

Facts: Through this Intra Court Appeal, appellants called in question order passed by learned Single Judge of this Court whereby constitution petition filed by the respondent was allowed and impugned order declining promotion to the respondent was set aside and present appellants were directed to proceed in the matter and reconsider the case of the respondent on its own merits and in the light of judgment of Supreme Court of Pakistan mentioned in the said order.

Issue: Is intra court appeal competent from the order of a single judge in constitutional jurisdiction due to availability of appeal against the original order?

Analysis: The question relating to maintainability of Intra Court Appeal in terms of proviso to subsection (2) of Section 3 of Law Reforms Ordinance, 1972 came up for consideration in the case of "Mst. Karim Bibi and others v. Hussain Bakhsh and another" (PLD 1984 SC 344) wherein Supreme Court of Pakistan has held that where there is at least one appeal against the original order, in the proceedings, then no appeal would be competent from the order of a single judge in constitutional jurisdiction. Meaning thereby that the test is whether the original order, passed in the proceedings was subject to an appeal under the relevant law, irrespective of the fact as to whether the remedy of appeal was availed or not by a party. A similar view was rendered by the Supreme Court of Pakistan in the case "Muhammad Abdullah v. Deputy Settlement Commissioner, Centre-I, Lahore" (PLD 1985 SC 107) wherein the said Court again reiterated the principle laid down in the Karim Bibi case (supra) and held that Intra Court Appeal was not competent because the law provided for an appeal against the original order. In recent judgment of Supreme Court of Pakistan "International Islamic University, Islamabad through Rector and another Vs. Syed Naveed Altaf and others" (2024 SCMR 472), the Supreme Court of Pakistan upheld the order of High Court declaring the Intra Court Appeal as not maintainable due to availability of appeal against the original order by observing that where decision is made by Single Judge of High Court in proceedings under challenge through constitution petition, the essential requirement to invoke the proviso to section 3(2) of the Law Reforms Ordinance for determination of maintainability of Intra Court Appeal is to see whether the remedy of at least one appeal, review or revision is available under the law against the original order.

Conclusion: Intra court appeal is not competent from the order of a single judge in constitutional jurisdiction due to availability of appeal against the original order.

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43. **Lahore High Court**
Ahsan Allahi Zaheer and another v. Government of Punjab.
Intra Court Appeal No. 57 of 2024.
Mr. Justice Muhammad Waheed Khan, Mr. Justice Sadiq Mahmud Khurram.
https://sys.lhc.gov.pk/appjudgments/2024LHC3038.pdf

Facts: This Intra Court Appeal has been filed against the order passed by the learned Single Judge in Chambers in the Writ Petition, whereby the Petition filed by the appellants under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 was dismissed.

Issues: i) What are the constraints imposed by Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 on the ability of the high court to compel an employer to renew expired contracts of service through a mandatory injunction?
ii) Whether the high court in the exercise of its jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 can entertain such kind of allegations which require strict factual proof and recording of evidence?
iii) Whether the contractual employees have an automatic right to continue the employment?
iv) Whether the contract employees have a vested right to claim extension of contract through constitutional jurisdiction of the Court under Article 199 of the Constitution and what alternative legal recourse is available to such employees in cases of alleged wrongful termination or contract breach by their employers?
v) Whether the writ jurisdiction of High Court is barred in presence of alternate and efficacious remedy?

Analysis: i) We are afraid that the subject matter extension of contracts cannot be granted to their appellants as of law as well as of right, firstly, for the reasons that on the day when the appellants invoked the jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973,their status was of employees whose contracts had expired and this Court under its jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 through a mandatory injunction cannot force an unwilling employer to extend the contracts of service which has already expired.
ii) Secondly, for granting a relief canvassed by the appellants in the petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 and now in the instant Intra Court Appeal this Court cannot undertake a factual inquiry. Thirdly, it is not the case of the appellants that non-extension of their contracts suffers from mala fide in law as neither the Contract Policy, 2004 nor the Recruitment Policy 2022 has been challenged nor any statutory instrument or order has been assailed. The nature of challenge put forward by the appellants at maximum can be termed as mala fide in fact, which this Court in the exercise of its jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 cannot entertain, as such kind of allegations require strict factual proof and recording of evidence.
iii) It is important to note that the employment of appellants was contractual in nature and being contractual employees, the appellants have no automatic right to continue the employment unless same has specifically been provided in law. Being contractual employees, the relationship between the appellants and respondents will be governed by the principle of master and servant and the

appellants have to serve till the satisfaction of their master.

iv) Hence, in view of the established principle of law that a contract employee is debarred from approaching this Court in its jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 for reinstatement or extension of a contract and the only remedy available to a contract employee is to file suit for damages alleging any breach of contract or failure to extend the contract, this Court cannot force the employer to reinstate or extend the contract of the employees, even in case of any wrongful termination.

v) Even otherwise, in view of the availability of an alternate efficacious remedy/claim of damages/compensation, if any, to the appellants under the law, the jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is also barred.

Conclusions: i) High Court under its jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 through a mandatory injunction cannot force an unwilling employer to extend the contracts of service which has already expired

ii) No, the high court in the exercise of its jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 cannot entertain, such kind of allegations which require strict factual proof and recording of evidence.

iii) The contractual employees have no automatic right to continue the employment unless same has specifically been provided in law.

iv) See above in analysis no. iv.

v) The jurisdiction of High Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is barred in presence of alternate and efficacious remedy.

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44. **Lahore High Court**

Muhammad Dilshad v. The Government of Punjab through Chief Secretary, Punjab Lahore and five others.

Intra Court Appeal No. 56 of 2024

Mr. Justice Muhammad Waheed Khan, Mr. Justice Sadiq Mahmud Khurram

https://sys.lhc.gov.pk/appjudgments/2024LHC3033.pdf

Facts: This Intra Court Appeal has been filed against the order, passed by the learned Single Judge in Chambers in the Writ Petition, whereby the Petition filed by the appellant under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 was dismissed.

Issue: What is the basic criteria for the issuance of a writ of mandamus, and can a direction to issue a writ of mandamus be sought by a person who is not aggrieved?

Analysis: The existence of a legal right is the foundation of a writ of mandamus and the appellant has to prove that he was an aggrieved person. The appellant, in order to

obtain relief by way of a writ of mandamus, must satisfy the Court that he had a legal right to compel the performance of a duty and the person against whom the right was sought was under a legal obligation to perform the duty. A person cannot be said to be an aggrieved person unless he has a right in the performance of a statutory duty by a person performing functions in respect of any such right. Only an aggrieved person can file a writ other than a writ of habeas corpus and quo warranto and the learned counsel for the appellant has failed miserably to demonstrate before us that the appellant was an aggrieved person.

Conclusion: The existence of a legal right is the foundation of a writ of mandamus and the petitioner has to prove that he is an aggrieved person.

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45. **Lahore High Court**
Muhammad Arif Malik v. Additional District Judge & two others
W.P No. 12218 of 2022
Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC2933.pdf

Facts: Instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 was filed to call into question the validity of order and judgments passed by learned Special Judge Rent, and learned Additional District Judge, , respectively, whereby ejectment petition filed by respondent was accepted by learned Special Judge Rent, however, the respondent was held entitled only to receive arrears of rent from the date of filing ejectment petition at the rate of Rs.9000/- per month till vacation of demised premises, and appeals filed by both the parties were decided by dismissing the appeal filed by petitioner and partially allowing the appeal filed by respondent.

Issue: (i) Whether entries in record pertaining to PT-I confer ownership?
(ii) Whether mortgagor can legitimately create mortgage in respect of property, the ownership of which does not vest in him?
(iii) Is the amount agreed to be paid under the lease agreement, which is part of a combined mortgage and lease transaction, legally considered rent payable by a tenant to a landlord, or is it merely interest due on the mortgage money?
(iii) Whether mortgage is merely a charge or ownership?
(iv) What is the effect of simultaneous execution of mortgage and lease by the mortgagor?
(v) What should be kept in view by the Courts while dealing with the cases of lease deed executed simultaneously with the mortgage?
(vi) When concurrent finding of the courts below can be interfered through constitutional jurisdiction under Article 199 of the Constitution of Pakistan?

Analysis: (i) Even otherwise, it is by now a settled principle of law that entries in the record pertaining to PT-I in no way confer ownership rights… wherein while dealing with the authenticity of PT-1 it was observed by the Apex Court that any entry in PT-1 maintained by Excise & Taxation Office would not confer any ownership

right over the property and such document merely speaks about the right of possession.

(ii) There is no cavil with the proposition that no mortgage can legitimately be created in respect of property, the title/ownership whereof does not vest in the mortgagor as the mortgagor does not have any explicit authority to create charge upon such property.

(iii) Undeniably, agreements i.e. one to mortgage the property and second to lease out the property are mentioned in one and the same document Exh:A1. Irresistible and vivid conclusion that can be drawn from the contents of document Exh.A1 would be that lease deal as mentioned in Exh.A1 was coined merely for the purpose of realizing the interest due on mortgage money, therefore, the amount agreed to be paid as a rent can hardly be counted and considered as a rent payable by the tenant to the landlord. As the amount that was shown to be received by the respondent was a certain sum of amount to be received for the consideration of amount to the tune of Rs.200,000/- that was lent to mortgagor, therefore, said amount can hardly be considered as rent amount to be paid by the mortgagor to the mortgagee for the simple reason that the mortgagor still was the owner of the property…it was observed that it is established principle of law that mortgage is a charge and not ownership.

(iv) Simultaneous execution of mortgage and lease by the mortgagor shall be justifiably considered as mechanism/mode for the purposes of realizing due interest on the mortgage money and in such eventuality no relationship of landlord and tenant would come into existence as the lease deed in fact was a device to recover interest on loan.

(v) It was further observed by the Apex Court that in dealing with the cases of that nature it should be kept in view that a lease deed executed simultaneously with the mortgage deed in fact provides a machinery under which the mortgagee has to receive interest on the principal amount advanced as loan to the mortgagor whereafter more than one legal incidents flow from that situation. It was finally resolved by the Apex Court that relationship of landlord and tenant would not thereby come into force in the sense in which those terms were ordinarily understood.

(vi) Indeed this Court while invoking the provisions of Article 199 of the Constitution do not ordinarily interfere with the concurrent findings of fact given by the courts below, however, it is settled principle of law that where the orders passed by the courts below suffer from some legal error or jurisdictional defect, this Court can conveniently invoke the jurisdiction under the provisions of Article 199 and to set aside the impugned order and decrees as being passed in exercise of jurisdiction not vested in the courts below.

Conclusion: (i) Entries in the record pertaining to PT-I in no way confer ownership rights.

(ii) No mortgage can legitimately be created in respect of property, the title/ownership whereof does not vest in the mortgagor.

(iii) Said amount can hardly be considered as rent amount to be paid by the mortgagor to the mortgagee for the simple reason that the mortgagor still was the owner of the property and mortgage is a charge and not ownership.
(iv) See above analysis No. (iv).
(v) While dealing with the cases of that nature it should be kept in view by the Courts that a lease deed executed simultaneously with the mortgage deed in fact provides a machinery under which the mortgagee has to receive interest on the principal amount advanced as loan to the mortgagor.
(vi) See above analysis No. (vi).

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46. **Lahore High Court**
Muhammad Arshad & others v. The State
Criminal Appeal No.24464-J of 2021
Mr. Justice Shakil Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC2955.pdf

Facts: Criminal Appeal was filed through jail authorities to challenge conviction and sentences passed under sections 302, 364, 109, 148, 149 PPC by Additional Sessions Judge/Trial Court.

Issues: i) Import of Article 129 Qanun-e-Shahadat Order, 1984.
ii) Circumstances which make presence of PWs at scene of occurrence doubtful.
iii) Motive as corroborative piece of evidence.
iv) Effect of delay in conducting post mortem examination.

Analysis: i) Provisions of Article 129 of Qanun-e-Shahadat Order, 1984 allow the courts to presume the existence of any fact, which it thinks likely to have happened in the ordinary course of natural events and human conduct in relation to the facts of a particular case. The conduct of witnesses of ocular account in the instant case vividly was opposite to the common course of natural events and human conduct, further suggesting that the witnesses of ocular account were not present at the time of occurrence.
ii) It would be hard to believe that assailants would have waited for arrival of PWs so as to enable them to witness the occurrence and on their arrival they started causing injuries on the person. Such a behavior on the part of assailants is not in consonance with the natural human behavior and it can very conveniently be inferred that PWs were not present at the spot and they have merely been introduced as witnesses of ocular account after due deliberations and consultation.
iii) It is also a settled principle of law that motive is always considered as a double edged weapon which cuts both ways. It is an admitted rule of appreciation of evidence that motive is only corroborative piece of evidence and if the ocular account is found to be unreliable then motive alone would have no evidentiary value.
iv) It may also be seen that autopsy in this case was conducted….after around seventeen hours of the occurrence. According to post mortem examination report, dead body was received in hospital at 05:00 P.M. and police papers were received

at 09:30 P.M. No plausible explanation is forthcoming by the prosecution to justify such a belated submission of police papers and post mortem examination and the same would give rise to a legitimate presumption that police papers were sent to hospital after deliberations and consultation.

Conclusion: i) Provisions of Article 129 of Qanun-e-Shahadat Order, 1984 allow the courts to presume the existence of any fact, which it thinks likely to have happened in the ordinary course of natural events and human conduct in relation to the facts of a particular case.
ii) See above analysis No. ii.
iii) Motive is only corroborative piece of evidence and if the ocular account is found to be unreliable then motive alone would have no evidentiary value.
iv) Delay in conducting post mortem examination gives rise to legitimate presumption of deliberation and consultation.

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47. **Lahore High Court**
Muhammad Umar etc. v. The State, etc.
Criminal Appeal No.58520-J of 2020
Mirza Munawwar Hussain Baig v. The State, etc.
Criminal Revision No. No.49773 of 2020
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC2718.pdf

Facts: The appellants, were tried by the Additional Sessions Judge in case FIR under sections 302, 460 & 411 PPC and on conclusion of trial, they were convicted and sentenced. Sentences of the appellants were ordered to run concurrently with benefit of section 382-B of Cr.P.C. The appellants preferred appeal against conviction, whereas, the complainant filed criminal revision.

Issues: i) What is the duty of the investigator to ensure the safe dispatch and deposit of parcels to PFSA?
ii) Can an expert from PFSA visit the crime scene on its own and dispatch material directly to PFSA for examination?
iii) Is it imperative for the prosecution to provide all links in chain as unbroken of circumstantial evidence, where one end of the same touches the dead body and the other the neck of the accused?
iv) Whether a joint identification parade can be read against the accused?
v) Whether the process of identification of an article is also required to be conducted by the Magistrate in the same fashion as the identification of a suspect?
vi) Can courts be required to take extra care and caution to narrowly examine circumstantial evidence with a pure judicial approach to satisfy itself, about its intrinsic worth and reliability?
vii) Whether mere medical evidence can be made basis to record or sustain conviction?

Analysis: i) According to prosecution's own showing, it was an unseen occurrence, hinges

upon the circumstantial evidence which usually flows from the artefacts of death with sequence of articles lying near or around the dead body, examination whereof with naked eye by the police or expert is required to be done only in prescribed manner, procedural mandate is mentioned in Rule. 25.33 of Police Rules, 1934… Under the command of above Rule, investigating officer can seek technical assistance from the experts as per Rule 25.14 of Police Rules, 1934… Rule 25.14 in all covers calling in aid of PFSA teams for the purpose of preservation, collection, sampling and packaging of articles, biological stains and securing the finger prints followed by handing over the parcels to the police for its dispatch to PFSA analysis. Investigator is required to stamp such parcels with seal of police station by mentioning the particulars of case as required by Rule 25.33 cited above, its entry into register No. 19 of police station and then after obtaining docket/permission from the senior police officer of the district ensure safe dispatch and deposit of parcels to PFSA. Rules-25.41 of Police Rules, 1934 relates to channel of communication with Chemical Examiner which mandates as under:- "Superintendents of Police are authorised to correspond with and submit articles for analysis to the Chemical Examiner direct in all cases other than human poisoning cases….." Further requirement of Rule 25.41, has also been observed by this Court in case reported as "Meer Nawaz alias Meero Vs The State" (PLJ 2022 Cr. C 955 Lahore).

ii) In no case, an expert can take the samples direct to PFSA for analysis because it is the investigator to decide what sort of analysis he is seeking in that particular case. Rule-25.41 (2) impliedly prohibits such practice which is mentioned in said Rule in the form of Notes: - (2) as under:- "(2) In no case should the Medical Officer attempt to apply tests for himself. Any such procedure is liable to vitiate the subsequent investigation of the case in the laboratory of the Chemical Examiner" Juxtaposing of above rule with mandate of PFSA is essential to see if any power is available to PFSA experts to take a lead on crime scene independent of investigators. As per section-4 of the Punjab Forensic Science Agency Act, 2007, functions of PFSA… As per above mandate, PFSA can seek clarification from the person who has collected or handled the forensic material in prescribed manner or subject to direction of government collect forensic material that requires special expertise or scientific methods for collection and preservation. Thus, in no case PFSA, at its own can visit the crime scene except summoned by the investigator which he must do if essential. Similarly, experts of PFSA also cannot dispatch material directly to PFSA. 10. Further introducing an expert in chain of safe custody of parceled articles would amount to compromise the process because it is the legal duty of police to dispatch such articles to PFSA and not the expert and if the custody protocols are breached, then police can be held responsible and not the experts. Such breach amounts to disobeying the direction of law or defective investigation which is culpable under sections 166 & 186 (2) of PPC, however, if at the crime scene any expert in connivance destroys or manipulates evidence can be bracketed for offences under sections 166 or 217 of PPC but not otherwise because their function is to conduct test or analysis of

forensic material, therefore, are held responsible only if tender false opinion as mentioned in section 13 of Punjab Forensic Science Agency Act, 2007…

iii) To believe or rely on circumstantial evidence, the well settled and deeply entrenched principle is that it is imperative for the prosecution to provide all links in chain as unbroken, where one end of the same touches the dead body and the other the neck of the accused… Including "LEJZOR TEPER versus THE QUEEN" (PLD 1952 Privy Council 119) & others, dilated upon the strands of circumstantial evidence like motive, plans and preparatory acts, capacity, opportunity, identity, continuance, failure to give evidence and failure to provide evidence, and held that circumstantial evidence must be conclusive.

iv) It has further been observed that it was a joint identification parade which cannot be read against the accused/ appellants because it opposes to dictum laid down by Supreme Court of Pakistan in many cases like PLD 2019 Supreme Court 488 wherein notice was given to Kanwar Anwar Ali, Special Judicial Magistrate for his dereliction of duty and lack of sufficient legal knowledge on conducting defective identification parade…

v) Even otherwise process of identification of an article is also required to be conducted by the Magistrate in the same fashion as he does for identification of a suspect. This has been explained in law in terms that evidentiary value of identification parade as being relevant fact in the form of explanatory evidence is regulated under Article 22 of Qanun-e-Shahadat Order, 1984… The words 'identity of anything or person' in the above Article makes no difference of process for both. I am also mindful of the fact that identification of articles in the manner as has been done in this case, is least permissible in law. The most essential requirement is that the witnesses should not have had an opportunity of seeing the property after its recovery and before its identification before the Magistrate. For that purpose, it is necessary to seal the property as soon as it is recovered and to keep it in a sealed condition till it is produced before the Magistrate. If the police officers who take the sealed bundles to the police station after recovery and who take it to the Magistrate for identification proceedings should be examined to prove that the sealed bundles were not tampered in the way. The sealed bundles should be opened in the presence of the Magistrate conducting the identification proceedings and he should depose about it. The property to be mixed with the property to be identified should also be sealed some days before witnesses are called and the bundle containing it should also be opened in the presence of the Magistrate who should testify about it in Court. Further the result of identification should be entered in the memorandum by the Magistrate in his own hand.

vi) Supreme Court of Pakistan has held that in cases of circumstantial evidence, there is every chance of fabricating the evidence, which can easily be procured; therefore, Courts are required to take extra care and caution to narrowly examine such evidence with pure judicial approach to satisfy itself, about its intrinsic worth and reliability, also ensuring that no dishonesty was committed during the course of collecting such evidence by the investigators. If there are apparent

indications of designs on part of the investigating agency in the preparation of a case resting on circumstantial evidence, the Court must be on guard against the trap of being deliberately misled into a false inference.
vii) It is trite that medical evidence cannot be made basis to record or sustain conviction because it could only give details about the locale, dimension, kind of weapon used, the duration between injury and medical examination or death and autopsy, etc. but never identifies the real assailant.

Conclusion: i) See above analysis No. i.
ii) An expert from PFSA cannot visit the crime scene on its own and dispatch material directly to PFSA for examination.
iii) It is imperative for the prosecution to provide all links in chain as unbroken of circumstantial evidence, where one end of the same touches the dead body and the other the neck of the accused.
iv) A joint identification parade cannot be read against the accused.
v) The process of identification of an article is also required to be conducted by the Magistrate in the same fashion as the identification of a suspect.
vi) Courts are required to take extra care and caution to narrowly examine the circumstantial evidence with pure judicial approach to satisfy itself, about its intrinsic worth and reliability, also ensuring that no dishonesty was committed during the course of collecting such evidence by the investigators.
vii) Mere medical evidence cannot be made basis to record or sustain conviction because it can only give details about the locale, dimension, kind of weapon used, the duration between injury and medical examination or death and autopsy, etc. but never identifies the real assailant.

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48. **Lahore High Court**
Muhammad Shamoon etc. v. SHO, etc.
Criminal Revision No. 31115 of 2021
Muhammad Asif etc. v. SHO, etc.
Criminal Revision No. 27750 of 2021
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2024LHC2802.pdf

Facts: The petitioners filed instant Criminal Revisions against order passed by learned Special Judge (Central), declining the request of petitioners for return of their legal money allegedly recovered by respondent No. 2/Railway Police from them as an embezzled amount in relation to a case FIR u/s 420, 467, 468, 471, 472, 109 PPC read with 5(2) 47 Prevention of Corruption Act, 1947.

Issues: i) When criminal court may pass order regarding disposal of property?
ii) Whether principle of merger applies when decision of trial court is being reversed by the appellate court?
iii) What is recourse to accused for return of property etc., if he has been convicted by trial court but acquitted by appellate court?
iv) Whether High Court can pass appropriate order u/s 520 of Cr.PC if trial court

has not decided petition u/s 517 of Cr.PC on merits?

v) Whether section 517 of Cr.PC is exhaustive section for the purpose of disposal of property?

vi) Whether section 517 of Cr.P.C. provides jurisdiction to Court to decide all questions arising out of acquittal order.?

vii) Whether a criminal trial court has role similar to executing court has u/s 47 of CPC?

Analysis: i) Section 517 Cr.P.C clearly mentions that when an inquiry or trial is concluded, Court concerned may pass order for the disposal by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document. Conclusion of trial includes decision of case in appeal when no order with respect to case property has been made by the appellate Court. There is no cavil to the proposition that under section 520 of Cr.P.C. High Court is also authorized to pass an appropriate order in case learned trial Court fails to exercise power under section 517 Cr.P.C.

ii) In this case trial Court has ordered confiscation of case property through a judgment of conviction and said decision has been reversed, therefore, principle of merger shall not apply, which attracts only if the appellate Court upholds the decision of trial Court or modify it in substance or relief but in the present case this Court has not upheld or modified the judgment of trial Court, rather quashed it, therefore, by all means, the situation has been reversed.

iii) In the present case this Court has not upheld or modified the judgment of trial Court, rather quashed it, therefore, by all means, the situation has been reversed to the stage when during investigation amount was shown recovered from the petitioners, then accused, while opening an avenue for the petitioners to once again file the petitions on the analogy of section 516-A or 523 of Cr.P.C. but under section 517 of Cr.P.C.

iv) No doubt High Court under section 520 Cr.P.C. can pass an appropriate order, but only when petition under section 517 Cr.P.C. is decided by the trial Court on merits.

v) Section 517 of Cr.P.C. is not an exhaustive section, Court after conclusion of trial can also refer the matter to Magistrate for disposal of property as mentioned in section 518 of Cr.P.C.

vi) Though section 104 of Cr.P.C. authorizes the Court to impound any document or thing yet during the trial and after conclusion it can decide the fate of such property including destruction, confiscation and delivery to person entitled. When the accused, during the trial claims the property as his own, then on acquittal he is entitled to receive it back straightaway by the order of trial Court but when the situation is otherwise then Court must decide the question again by providing opportunity to prove the entitlement and also reason for disowning of such property during the trial and Court can presume any fact while deciding application for claim. Section 517 of Cr.P.C. in that case provides jurisdiction to Court to decide all questions arising out of acquittal order.

vii) Section 517 of CrPC is somewhat like section 47 of CPC which says that all questions arising between the parties to the suit in which the decree was passed and relating to the execution, discharge or satisfaction of the decree shall be decided by the Court executing the decree and not by a separate suit. Similarly, as sections 379, 425 and 442 of Cr.P.C., say that all orders passed by Court of Reference, Appeal and Revision shall be certified to the lower Court which shall pass orders confirmable to the judgment and order of the High Court and if necessary, record shall be amended in accordance with law. Thus, in this way lower Court becomes an executing Court like one under section 47 of CPC, therefore, can decide all ancillary question relating to case property in accordance with law.

Conclusion: i) See above analysis No. i.
ii) Principle of merger does not apply when decision of trial court is being reversed by the appellate court.
iii) See above analysis No. iii.
iv) High Court can pass an appropriate order u/s 520 Cr.P.C., but only when petition under section 517 Cr.P.C. is decided by the trial Court on merits.
v) Section 517 of Cr.P.C. is not an exhaustive section, Court after conclusion of trial can also refer the matter to Magistrate for disposal of property as mentioned in section 518 of Cr.P.C.
vi) Section 517 of Cr.P.C. provides jurisdiction to Court to decide all questions arising out of acquittal order.
vii) See above analysis No. vii.

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49. **Lahore High Court**
Equity Master Securities (Pvt.) Limited & 03 others v. Pakistan Stock Exchange Limited & 937 others
C. O. No. 14225 / 2023
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2024LHC2925.pdf

Facts: This winding up Petition is instituted by Petitioner No. 1 / Equity Master Securities (Pvt) Limited in concert with Petitioners No. 2 to 4, the Chief Executive Officer and Directors of the Company in their capacity as contributories seeking to wind up the Company under the supervision of the Court in terms of Sections 301 and 305 of the Companies Act, 2017.

Issues: i) Whether prerequisites are required to be complied with by each category of persons authorized to institute a winding up Petition?
ii) What are the prerequisites of Section 304 of the Companies Act, 2017 in the case of a contributory?
iii) What is the prerequisite stipulated for a company to bring a winding up Petition?

iv) What is the condition precedent for winding up of the company voluntarily or by the court?
v) When SECP can file the winding up Petition?

Analysis: i) Section 304 of the Act accords the right to institute a winding up Petition to a company or to any creditor or creditors or to any contributory or contributories or by all or any of the aforesaid parties together or separately or to the registrar or to the SECP or to a person authorized by the SECP in that behalf subject to the provisions of the said Section. This Section lists certain mandatory prerequisites which are required to be complied with by each category of persons authorized to institute a winding up Petition.

ii) In the case of a contributory, the prerequisites of Section 304 of the Act are that a contributory shall not be entitled to present a winding up Petition unless either the number of members is reduced, in the case of a private company, below two, or, in the case of public company, below three; and the shares in respect of which he is a contributory or some of them either were originally allotted to him or have been held by him, and registered in his name, for at least one hundred and eighty days during eighteen months before the commencement of the winding up, or have or devolved on him through the death of a former holder.

iii) Similarly, the prerequisite stipulated for a company to bring a winding up Petition are that it has to furnish with its Petition, in the prescribed manner, the particulars of its assets, liabilities, business operations and the suits or proceedings pending against it.

iv) Section 305(1) of the Act stipulates that where a company is being wound up voluntarily or subject to the supervision of the Court, a Petition for its winding up by the Court may be presented by any person authorized to do so under Section 304 and subject to the provisions of that Section. Sub Section (2) thereof casts a mandatory obligation upon the Court that it shall not make a winding up order unless it is satisfied that the voluntary winding up or winding up subject to the supervision of the Court cannot be continued with due regard to the interests of the creditors or contributories or both or it is in the public interest.

v) SECP as the apex regulator may file the winding up Petition as and when in its opinion, it would be just and equitable to do so in terms of Section 148 of the Securities Act read with Sections 304 and 305 of the Act.

Conclusion: i) Section 304 of the Companies Act, 2017 lists certain mandatory prerequisites which are required to be complied with by each category of persons authorized to institute a winding up Petition.

ii) See above analysis No. ii.

iii) See above analysis No. iii.

iv) Sub Section (2) of Section 305(1) of the Companies Act, 2017 casts a mandatory obligation upon the Court that it shall not make a winding up order unless it is satisfied that the voluntary winding up or winding up subject to the

supervision of the Court cannot be continued with due regard to the interests of the creditors or contributories or both or it is in the public interest.
v) See above analysis No. v.

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50. **Lahore High Court**
Qadeer Ali etc. v. Province of Punjab etc.
W.P No.41334/2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC2661.pdf

Facts: The petitioners were appointed in the Punjab Social Welfare and Bait-ul-Maal Department, on contract basis, in BPS-01 and BPS-11, and their contracts were extended from time to time and were still in service. The Projects were started on the development side, however, the same was converted from Development (Current) Budget to Non-Development (Regular) Budget. In the given facts and circumstances the petitioners sought regularization of their services from the date of their initial appointments.

Issue: Whether an employee of a project that has been converted from the development side to non-development side, is entitled to be regularized, as a matter of right?

Analysis: At present, the regularization of the project employees is backed up by a uniform policy of the Government of Punjab, which envisages certain safeguards and advantages for such employees, in terms of letter dated 06.06.2022… It is essentially a policy matter falling within the domain of the executive. This Court in exercise of judicial review cannot navigate beyond and above the policy set out by the executive limb of the State, for project employees, as this would surely amount to the judicial overreach. Therefore, a direction cannot be passed to the respondents for regularization of service of the petitioners, as of right, without advertising the posts for general public.

Conclusion: An employee of a project that has been converted from the development side to non-development side, is not entitled to be regularized, as a matter of right.

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51. **Lahore High Court**
Muhammad Atif, etc. v. Government of Punjab etc.
W.P No. 41101 of 2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC2667.pdf

Facts: The facts of the case are that the petitioners were admittedly employed by the School Education Department, Punjab on contract basis, and are no more in service, on account of termination of their contracts, *inter alia*, for the reason that they could not obtain the requisite qualification of B.Ed, within the stipulated period of time.

Issues: (i) Whether employees of education department who were admittedly required to obtain B.Ed qualification within stipulated period of time are entitled to be reinstated in service after having obtained the qualification, after the expiry of the contractual period?
(ii) How the Courts are to examine the matter where principle of similarly placed person is agitated.?

Analysis: (i) Whereas the petitioners' earlier round of litigation culminating into judgment dated 04.06.2021, in case of *Muhammad Akmal Khan supra*, holds as under:
… (iv) Those Petitioners who have not qualified the requisite educational qualification within time shall be deemed to have been terminated with effect from the date of their earlier termination as in the case of other Educators after the decision as aforesaid.
Perusal of the record reveals that the case of the petitioners clearly falls under Para 5(iv) quoted hereinabove. Their termination was admittedly upheld. They had an opportunity to immediately file an appeal. Admittedly, the same has not been done. At that point of time, the petitioners had no idea as to whether any Hussain Farabi of District Okara or Syed Atta-ul-Mustafa of District Faisalabad had been given any extension. *Prima facie*, the present petition has been filed to take a chance on the basis of principle of similarly placed persons and amounts to review of the judgment dated 04.06.2021.
(ii) The judgment in case of *Muhammad Shafiq supra* unequivocally has laid down the contours as to how the Courts are to examine the matter where principle of similarly placed person is agitated. If relief is given to one person against the applicable policy and/or law, the same cannot be the ground for the grant of same relief in another case. Two wrongs are not going to make one right.

Conclusion: (i) Such employees are not entitled to be reinstated in service after having obtained the qualification, after the expiry of the contractual period.
(ii) See above analysis No. (ii).

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52. **Lahore High Court**
Liaquat Ali v. Noor Ahmad
R.F.A. No.338 of 2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC3063.pdf

Facts: This appeal is directed against the impugned judgment and decree passed by the Additional District Judge in a suit instituted by the respondent for recovery of Rs.1,100,000/-, on the basis of the impugned cheque issued by the appellant.

Issue: Whether presumption of correctness attached to a negotiable instrument, in terms of Section 118 of the Act, is lost or rebutted if the said instrument is in a mutilated/torn-down condition?

Analysis: It is imperative to note that in terms of Section 118 of the Act, presumptions of correctness, inter alia, are attached in relation as to the consideration; to date; its holder; signature of the drawer. If a cheque is in a torn condition, it is called a mutilated cheque. If the cheque is torn into two or more pieces and the relevant information is damaged, the bank shall reject the cheque and declare it invalid, until the drawer confirms its validation. However, if the cheque is torn in the manner that all the important data on the mutilated cheque is intact, then the bank may process the cheque further for clearance. …Therefore, in such like cases where an instrument forming the basis of the suit under Order XXXVII, CPC, is mutilated, its effect is to be determined on case-to-case basis, considering the nature and extent of the mutilation of such negotiable instrument. This in turn would also determine whether the legal presumption of correctness attached to a negotiable instrument, is lost or rebutted, as a consequence of such mutilation. I am of the opinion that if the key information of an instrument such as the name of payee, date, amount, signatures etc., have not been damaged, the presumption attached thereto is not lost.

Conclusion: In terms of Section 118 of the Act, presumptions of correctness, inter alia, are attached in relation as to the consideration; to date; its holder; signature of the drawer. So, if the key information of an instrument such as the name of payee, date, amount, signatures etc., have not been damaged, the presumption attached thereto is not lost.

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53. **Lahore High Court**
Ghulam Akhtar v. Muhammad Iqbal
C.R. No.16-D of 2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC3055.pdf

Facts: The respondent filed a suit for specific performance of agreement to sell which was dismissed by trial court, against which respondent preferred appeal which was allowed and suit of respondent was decreed, hence, instant revision petition.

Issues: i) Whether judgment of trial court or appellate court should be given preference in case of conflict between judgments of courts below?
ii) Whether grant of relief of specific performance is discretionary in nature or court is bound to decree same?
iii) Whether it is mandatory for vendee to show willingness & readiness to deposit remaining sale consideration in suit for specific performance?
iv) Whether in a suit for specific performance, is it equitable to improve the sale price?

Analysis: i) It is settled principle of law that in the event of a conflict between the judgments of the Courts below, preference should be given to the views of the Appellate Court below, who had the opportunity of reexamining and analyzing the evidence on the record.

ii) This Court cannot lose sight of the fact that in terms of Section 22 of the Specific Relief Act, 1877 ("the Act"), the jurisdiction of the Courts to issue a decree of specific performance is discretionary/equitable in nature, thus, the Court is not bound to grant such relief merely because it is lawful to do so.
iii) In cases involving specific performance, the primary part of the contract is the consideration to be paid by the vendee for which he must exhibit his willingness and readiness, at all times. In this regard, the vendee must unconditionally seek permission of the Court, on the first date of hearing, to deposit the remaining sale consideration.
iv) In the present case, a meager amount was paid as earnest money and the possession of the suit property was also taken over by the respondent where after the respondent continued to retain both the possession of suit property as well as the 96% of outstanding sale consideration, which in the opinion of this Court is inequitable, on the part of the respondent… There is no denial that with the passage of time, there has been inflation in the country and Pakistani Rupee has considerably devalued. While the petitioner claims that price of similar property in the vicinity has escalated thrice, learned counsel for the respondent could not refute that the price has been doubled during the pendency of the proceedings. Therefore, it is equitable to improve the total sale price.

Conclusion: i) Judgment of appellate court should be given preference in case of conflict between judgments of courts below.
ii) The jurisdiction of the Courts to issue a decree of specific performance is discretionary/equitable in nature and the Court is not bound to grant such relief merely because it is lawful to do so.
iii) See above analysis No. iii.
iv) See above analysis No. iv.

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54. **Lahore High Court**
Maqsood Ahmad v. Additional District Judge, etc.
W.P. No. 38539 of 2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2024LHC2947.pdf

Facts: Respondent no. 03 (who is petitioner in connected petition) initiated eviction proceedings against the petitioner (in present petition) which was allowed. When the appeals were preferred by both sides, the appeal of the respondent was dismissed, whereas, the appeal of the petitioner was partly allowed to the extent of arrears, hence, instant Writ Petitions filed by petitioner and respondent no. 03.

Issues: i) What does term concise statement indicate?
ii) What does term concise statement mandate in relation to eviction proceedings initiated under Punjab Rented Premises Act, 2009 and what is effect of failure to comply with?
iii) Whether strained and hostile relationship between the landlord and the tenant developed, on account of eviction proceedings initiated by the landlord, is a valid

ground for eviction of the tenant, under the Punjab Rented Premises Act, 2009?

Analysis: i) In common legal parlance, concise statement indicates reciting of facts with precision that forms basis of a claim and/or underlies the accrual of cause of action. The underlying purpose is to simplify the key issues in dispute. Therefore, the concise statement must contain enough details of the dispute to steer the Court's focus only to the relevant issues making it easier for it to adjudicate.

ii) The term "concise statement" has not been defined by the Act, however, Order VI, Rule 2 of Code of Civil Procedure, 1908 refers to the term… In relation to the eviction proceedings initiated under the Act, the term concise statement referred in Section 19(3) of the Act, mandates the ejectment petitioner to give the details of the allegation against the respondent and if the allegation of default in payment of monthly rent is made, sufficient details pertaining to the date from which the default occurred as also the claim as on the date of filing of the ejectment petition becomes sine qua non of such eviction petition to succeed… The true mandate of Section 19(3) of the Act is that it is obligatory for the ejectment petitioner/landlord to narrate all the relevant and necessary details of his claim (of default in the instant case) by elaborating the same with precision (in terms of the date of default and total period of default) and if he fails to do so, he cannot be allowed to improve upon the same through the evidence. Any such improvement would be fatal.

iii) The Punjab Rented Premises Act, 2009 aims to consolidate and amend the law relating to the relationship of landlord and tenant, inter alia, eviction of the tenant(s). The Act envisaged grounds of eviction in term of Section 15 of the Act, quoted hereinabove and the fact that on account of litigation between the parties, their relationship have become strained, is not a valid ground to seek eviction. If such like grounds for eviction are allowed to be transplanted, this would amount to the Courts traversing beyond their domain of statutory adherence.

Conclusion: i) Concise statement indicates reciting of facts with precision that forms basis of a claim and/or underlies the accrual of cause of action.

ii) See above analysis No. ii.

iii) Strained and hostile relationship between the landlord and the tenant developed, on account of eviction proceedings initiated by the landlord, is not a valid ground for eviction of the tenant, under the Punjab Rented Premises Act, 2009.

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55. **Lahore High Court**
Mst. Farzana Bibi v. Capital City Police Officer, etc.
Crl. Misc. No. 36448-H/2024
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2024LHC3047.pdf

Facts: The petitioner filed a petition under Section 491 of the Criminal Procedure Code, 1898 for the recovery of the alleged detenus, with the assertion that the *detenus*

are currently held in illegal and improper custody by the respondent, No.2/Station House Officer of Police Station.

Issues: i) Whether the due process of law can be bypassed while dealing with hardened and desperate criminals?
ii) How the fake police encounters can be prevented?

Analysis: i) The assertion that police kill hardened and desperate criminals in encounters lacks any legal foundation and fundamentally challenges the credibility and effectiveness of the criminal justice system. Such an ill-founded rationale is not only legally indefensible but also morally reprehensible. By bypassing due process and resorting to extrajudicial killings, law enforcement undermines the very principles upon which a just society is built. Furthermore, this practice casts a long shadow of doubt over the integrity of law enforcement agencies. It suggests a lack of faith in the ability of criminal justice system to deliver justice and a preference for brute force over legal scrutiny. Such actions propagate a dangerous message that the State approves lawlessness among its enforcers. This not only perpetuates a cycle of violence but also breeds resentment and fear within the community.

ii) The complex nature of self-defence can sometimes be overshadowed by the issue of fake police encounters, leading to significant ethical and legal challenges. Striking a balance between the legitimate right of self-defence and the prevention of fake encounters necessitates a balanced approach. A stringent oversight mechanism must be evolved within police department. Independent body in the spirit of *The Torture and Custodial Death (Prevention and Punishment) Act, 2022* should investigate the incidents where lethal force is used, ensuring that each case is meticulously scrutinized and that any misuse of power is promptly addressed. Legal framework should be fortified to delineate clear boundaries for the use of force. It is a settled law that the right of self-defence is contingent upon the presence of an immediate and credible threat. Any deviation from this standard should be met with severe repercussions, reinforcing the message that extrajudicial actions will not be tolerated…Training is another cornerstone in this delicate balance… Transparency is also crucial. The public must be kept informed about the policies governing the use of force and the measures taken to investigate and rectify any abuses. Body cameras and other forms of surveillance can serve as impartial witnesses, providing clear evidence of the circumstances surrounding each encounter.

Conclusion: i) The due process of law cannot be bypassed while dealing with hardened and desperate criminals.

ii) By developing oversight mechanism, enhancing training, ensuring transparency, reinforcing legal standards, and nurturing community relations, the fake police encounters can be prevented.

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56. **Lahore High Court**
Mst. Nimra Sheikh v. Muhammad Umair Siddiqui and another
Writ Petition No. 29490 of 2022
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2024LHC2809.pdf

Facts: The petitioners were appointed in the Punjab Social Welfare and Bait-ul-Maal Department, on contract basis, in BPS-01 and BPS-11, and their contracts were extended from time to time and were still in service. The Projects were started on the development side, however, the same was converted from Development (Current) Budget to Non-Development (Regular) Budget. In the given facts and circumstances the petitioners sought regularization of their services from the date of their initial appointments.

Issues: i) When issues are to be framed by the court?
ii) Whether the courts can reject the plaint, when it is clear that suit is meritless?

Analysis: i) Order XIV of Code of Civil Procedure, 1908 (CPC) provides for settlement of issues and determination on issue of law or on issues agreed upon. Rule 1(2) of Order XIV of CPC requires material proposition of law or fact(s) to be alleged in the suit in order to show a right to sue. Issues are ought to be framed when a material proposition of fact or law is affirmed by one party and denied by the other…
ii) In case titled "President, Zarai Taraqiati Bank Limited, Head Office, Islamabad vs. Kishwar Khan and others" (2022 SCMR 1598) the Supreme Court of Pakistan made it responsibility of the Courts to give meaningful reading to the plaint and when it is clear that suit is meritless and instead of disclosing a right to sue, as intended by legislature in the above discussed provisions of law, the suit is manifestly vexatious, the Courts can reject the plaint.

Conclusion: i) Issues are ought to be framed when a material proposition of fact or law is affirmed by one party and denied by the other.
ii) When it is clear that suit is meritless and instead of disclosing a right to sue, the suit is manifestly vexatious, the Courts can reject the plaint.

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57. **Lahore High Court**
Dr. Muhammad Asif v. ADJ Layyah, etc.
W.P. No.5637 of 2024
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2024LHC2704.pdf

Facts: The petitioner filed Writ Petition under Article 199 of Constitution to challenge the order passed by the Family Court to the extent of meeting schedule chalked out in favour of respondent No.3 and the judgment passed by the appellate court whereby appeal preferred by respondent No.3 was accepted and consequently, her application for the custody of minors was allowed while outlining a visitation

schedule for the petitioner.

Issues: i) What is guiding factor for deciding matter of custody of minor?
ii) What is difference between custody & guardianship and whether factor of maintaining the children has any role in deciding the custody of the minors?
iii) Whether pursuit of education and career attracts any disqualification for a mother seeking custody of minor?
iv) Whether wish of minor is to be given preference in deciding matter of custody?

Analysis: i) Bare reading of section 17 of the Guardian and Wards Act, 1890 reflects that welfare of the minor is the guiding factor in deciding the matter of custody, of course, while giving due consideration to the age, gender and religion of the minor and character and capacity of the proposed guardian.
ii) Father of minors is natural guardian…However, law maintains a distinction between custody and guardianship and respective rights and obligations in that regard under the Guardian and Wards Act, 1890. Custody under the Act involves a right to upbringing of a minor. On the other hand, guardianship entails the concept of taking care of the minor even in situations when the guardian does not have domain over the corpus of the child. A father is considered to be a natural guardian of a minor, since even after separation with the mother, and even when the mother has been granted custody of a minor, he is obligated to provide financial assistance to the minor. The liability to maintain the minor is not only religious and moral but legal. The right of custody of minor is subordinate to the fundamental principle i.e. welfare of the minor. Maintaining the children is the duty of father which cannot be a decisive factor in custody of the minors.
iii) In this day and age, when pursuit of education and career does not attract any disqualification for a father to seek custody of minor, how a mother can be discriminated on that basis. Working mothers are a reality of the day and their participation in the professional life is essential for the progress of societies. It makes roles of women even harder, which needs to be recognized and appreciated rather than discouraged or made more onerous by attributing disqualifications vis-à-vis custody of the minors. This does not mean that the Courts should become insensitive to the needs of the minors merely because their mother is a working woman. Welfare of the minor remains primary consideration for determining his or her custody. It is only recognition and adjustment of expectation from a working mother in comparison to a stay-at-home mother so that the former is not unreasonably put to any disadvantage.
iv) As regards plea that minor wishes to reside with his father, it is observed that minor is not always the best judge of where his or her welfare lies. Minor is of the tender age of about seven years, hence, it is not appropriate to attach much weight to his choice in order to determine where his welfare in relation to his custody lies. Moreover, as discussed above the minor has not been allowed to meet his mother for years, therefore, his mind is seemed to have been tutored. Refusal of the minor to recognize and meet his real mother indeed provides an evidence of

improper child rearing. It establishes that contrary to his welfare, the petitioner failed to prevent his misbehavior towards his mother which highlights the value system being inculcated or allowed to be nurtured in the minor by his parent in custody.

Conclusion: i) See above analysis No. i.
ii) Custody under the Guardian & Ward Act involves a right to upbringing of a minor. On the other hand, guardianship entails the concept of taking care of the minor even in situations when the guardian does not have domain over the corpus of the child. Maintaining the children is the duty of father which cannot be a decisive factor in custody of the minors.
iii) When pursuit of education and career does not attract any disqualification for a father to seek custody of minor, how a mother can be discriminated on that basis.
iv) See above analysis No. iv.

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58. **Lahore High Court**
M/s Radiant Medical (Private) Limited v. The Federal Board of Revenue and others
Writ Petition No. 34736 of 2024
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2024LHC2795.pdf

Facts: Through this Writ Petition, the petitioner has assailed the recovery made by the Inland Revenue Officer from the Bank Accounts maintained by the petitioner, pursuant to the notice in purported exercise of authority under Section 140 of the Income Tax Ordinance, 2001.

Issues: i) Whether the tax allegedly due from a taxpayer can be recovered during the pendency of the appeal before extra departmental forum?
ii) Is there any exception to the rule regarding recovery of tax from a person holding money on behalf of a taxpayer?
iii) When can the coercive measures as envisaged in section 140(1) of the Ordinance be adopted?

Analysis: i) It is well settled that the tax allegedly due from a taxpayer cannot be recovered before adjudication of liability in appeal preferred by a taxpayer before at least one extra departmental forum i.e. Appellate Tribunal Inland Revenue.
ii) It is manifest from perusal of the proviso to sub-section (1) of Section 140 of the Ordinance that the same creates exception to the recovery of tax from a person holding money on behalf of a taxpayer. Such exception expressly prohibits Commissioner from issuing notice under this sub-section for the recovery of any tax due from a taxpayer if said taxpayer had filed an appeal under Section 127 of the Ordinance in respect of the order under which the tax sought to be recovered has become payable and the appeal has not been decided… The said prohibition,

however, is subject to the condition that 10% of the said amount of tax is paid by the taxpayer.
iii) This clearly means that as long as the taxpayer is ready and willing to satisfy the condition specified in the aforementioned provision to Section 140(1) of the Ordinance, coercive measure visualized under the aforementioned section cannot be pressed into service.

Conclusion: i) The alleged tax cannot be recovered before adjudication of liability in appeal by at least one extra departmental forum.
ii) See above analysis No. ii.
iii) See above analysis No. iii.

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59. **Lahore High Court**
Muhammad Ilyas v. Muhammad Saeed, etc.
W.P. No.35336 of 2024
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2024LHC2799.pdf

Facts: Through this Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner assailed the order passed by the Special Judge Rent whereby application of the petitioner for setting aside ex-parte final order was dismissed and appeal there-against was also dismissed by the Additional District Judge.

Issue: Whether an application for setting aside ex-parte order without an application seeking leave to contest under the Punjab Rented Premises Act, 2009 can be taken into consideration?

Analysis: Section 21(4) of the Punjab Rented Premises Act, 2009 ('Act') states that if an ex-parte order is passed against a respondent, the respondent may, within ten days from the date of knowledge, apply to the Rent Tribunal for setting aside ex-parte order along with an application for leave to contest. Section 22(3) of the Act provides that an application for leave to contest shall be in the form of a written reply, stating grounds on which the leave is sought and shall be accompanied by an affidavit of the respondent, copy of all relevant documents in his possession and, if desired, affidavits of not more than two witnesses. From perusal of Section 21(4) of the Act, it is abundantly clear that while applying for setting aside ex-parte order, a separate application for leave to contest, in the form and manner prescribed in Section 22(3) of the Act has to be filed within the period of limitation. Any plea taken on merits of the case in the application for setting aside ex-parte order passed by the Rent Tribunal under Section 21 of the Act without an application seeking leave to contest in the form and manner prescribed under Section 22(3) of the Act cannot be taken into consideration.

Conclusion: An application for setting aside ex-parte order without an application seeking leave to contest in the form and manner prescribed in Section 22(3) of the Punjab Rented Premises Act, 2009 cannot be taken into consideration.

LATEST LEGISLATION / AMENDMENTS

1. Vide Notification of the Government of Punjab, Law and Parliamentary Affairs Department No.51 of 2024, dated 23.05.2024, amendments have been made in Rule-1 and Schedule of the Punjab Education Department College Education Recruitment Rules, 1989.
2. Vide Notification of the Government of Punjab, Law and Parliamentary Affairs Department No.52 of 2024, dated 29.05.2024, the Governor of Punjab, in exercise of powers under Serial no.8 of the Punjab Motor Vehicle Rules, 1969, appointed the Director General, Excise and Taxation, Punjab for approval of the design, contents, picture or image for any particular personalized vanity plate.
3. Vide Notification of the Government of Punjab, Law and Parliamentary Affairs Department No.53 of 2024, dated 29.05.2024, the Governor of Punjab, in exercise of powers under Section 119 of the Provincial Motor Vehicles Ordinance, 1965, the draft rules made by the Governor under section 43 of the said Ordinance, are published for the information of persons likely to be affected thereby while notice is also given for seeking objections and suggestion (if any) regarding the said draft rules.

SELECTED ARTICLES

1. HARVARD LAW REVIEW

https://harvardlawreview.org/print/vol-137/bail-at-the-founding/

Bail at the Founding by Kellen R. Funk & Sandra G. Mayson

How did criminal bail work in the Founding era? This question has become pressing as bail, and bail reform, have attracted increasing attention, in part because history is thought to bear on the meaning of bail-related constitutional provisions. To date, however, there has been no thorough account of bail at the Founding. This Article begins to correct the deficit in our collective memory by describing bail law and practice in the Founding era, from approximately 1790 to 1810. In order to give a full account, we surveyed a wide range of materials, including Founding-era statutes, case law, legal treatises, and manuals for magistrates; and original court, jail, administrative, and justice-of-the-peace records held in archives and private collections. The historical inquiry illuminates three key facts. First, the black-letter law of bail in the Founding era was highly protective of pretrial liberty. A uniquely American framework for bail guaranteed release, in theory, for nearly all accused persons. Second, things were

different on the ground. The primary records reveal that, for those who lived on the margins of society, bail practice bore little resemblance to the law on the books, and pretrial detention was routine. The third key point cuts across the law and reality of criminal bail: both in theory and in practice, the bail system was a system of unsecured pledges, not cash deposits. It operated through reputational capital, not financial capital. This fact refutes the claim, frequently advanced by opponents of contemporary bail reform, that cash bail is a timeless American tradition. The contrast between the written ideals and the actual practice of bail in the Founding era, meanwhile, highlights the difficulty of looking to the past for a determinate guide to legal meaning.

2. **STANFORD LAW REVIEW**
https://review.law.stanford.edu/wp-content/uploads/sites/3/2023/08/Dyk-76-Stan.-L.-Rev.-Online-10.pdf

The Role of Non-Adjudicative Facts in Judicial Decision making by Timothy B.Dyk

The use of the term "legislative facts" in the judicial context seems to be a misnomer. Of course, courts do not legislate, despite the role public policy may play in the development of legal doctrines. For this reason, it seems more appropriate in the judicial context to call these facts non-adjudicative facts rather than legislative facts. This difference in nomenclature does not affect the substance of the analysis. The purpose of this article is not to question the reliance of courts on non-adjudicative facts. The use of non-adjudicative facts is legitimate, but there are problems with their use and potential solutions - issues that concern both advocates and judges…

3. **MODERN LAW REVIEW**
https://onlinelibrary.wiley.com/doi/epdf/10.1111/1468-2230.12581

What Makes an Administrative Decision Unreasonable? by Hasan Dindjer

The nature of reasonableness review in administrative law has long been obscured behind vivid but uninformative descriptions. In recent years, courts and commentators have recognised that reasonableness review involves assessment of the weight and balance of reasons bearing on a decision. Yet by itself this idea is substantially incomplete, for there are many ways in which issues of weight might be relevant. Drawing on the theory of practical reason, this article offers a new account of the reasonableness standard that explains precisely how the weight of reasons matters. It shows, negatively, that several existing accounts are mistaken. Positively, it proposes that reasonableness be understood as a requirement of 'relativised justification': a decision must be justified relative to some eligible understanding of the balance of reasons. This account explains the standard's central features and yields a coherent, workable test for courts to apply.

4. **OXFORD JOURNAL OF LEGAL STUDIES**
https://academic.oup.com/ojls/article/43/2/322/7030721

Offences against Status by George Letsas

Philosophical accounts of status understand it either pejoratively, as social rank, or laudatorily, as the dignity possessed by all in virtue of our shared humanity. Status is considered to be something either we all have or no one should have. This article aims to show that there is a third, neglected, sense of status. It refers to the moral rights and duties one holds in virtue of one's social position or role. Employees, refugees, doctors, teachers and judges all hold social roles in virtue of which they have distinctive obligations, rights, privileges, powers and the like. This article aims to do two things: first, to distinguish the role-based notion of status from ideas of social rank, and to identify the various ways in which it constitutes a distinct category of moral wrongdoing; and second, to show that status, thus understood, is justified on egalitarian grounds even though, unlike dignity, not everyone has it. The moral point of status, I argue, is to regulate asymmetrical relations in which one of the parties suffers from background vulnerabilities and dependencies. Status as a moral idea vests both parties with a complex set of rights and duties, whose aim is to restore moral equality between the parties.

5. INDIAN LAW REVIEW

https://www.tandfonline.com/doi/full/10.1080/24730580.2018.1552233

The Juvenile Justice (Care and Protection of Children) Act 2015: an analysis by Asha Bajpai

The Juvenile Justice (Care and Protection of Children) Act 2015 was passed by the Parliament of India amidst intense controversy, prolonged debates and street protests by child rights groups, as well as some members of Parliament. This legislative note gives an overview of the background and processes that led to the passing of this Act. It discusses the positive provisions in the Act, like change in nomenclatures to remove negative connotations, inclusion of several new definitions such as orphaned, abandoned and surrendered children, setting timelines for inquiry by the Juvenile Justice Board, streamlining procedures for adoption, inclusion of new offences committed against children and mandatory registration of Child Care Institutions. It discusses the controversial provision of "transferring" children between 16 and 18 years accused of "heinous offences" to the adult criminal justice system. It gives recommendations for law reform and better implementation of the law.