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Supreme Court of Pakistan

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Supreme Court of Pakistan

1. *Dr. Mohammad Aslam Khaki v. Khawaja Khalid Farooq Khan*

https://www.supremecourt.gov.pk/downloads_judgements/c.p._3203_2017.pdf

Present:
Mr. Justice Qazi Faez Isa and Mr. Justice Syed Hasan Azhar Rizvi

Jurisdiction conferred by the Constitution ranks higher than jurisdiction conferred by law

The petitioner approached the apex Court of Pakistan without exhausting the available remedy of filing an Intra Court Appeal ("ICA") under section 3(2) of the Law Reforms Ordinance, 1972 against an order of the High Court whereby his Constitutional petition was dismissed.

Mr. Justice Qazi Faez Isa speaking for the bench observed that "Article 175(2) of the Constitution stipulates that jurisdiction on a court is to be 'conferred on it by the Constitution or by or under any law'. The jurisdiction conferred by the Constitution ranks higher than jurisdiction conferred by law.[25] The jurisdiction which has been conferred by law may also, by law, be revoked, but the jurisdiction conferred by the Constitution cannot be revoked by law. The appellate jurisdiction created by the Ordinance and through other laws does not take away the appellate jurisdiction of the Supreme Court conferred by the Constitution under its Article 185. However, since the Ordinance created an appellate forum, this Court will not ordinarily permit it to be bypassed, which does not mean that the appellate jurisdiction, which the Constitution vests in this Court, is made redundant. In appropriate cases, this Court will not insist that an intra-court appeal provided under the Ordinance, be availed of first." **Para 15**

2. *Federation of Pakistan v. SUS Motors (Pvt.) Ltd*

https://www.supremecourt.gov.pk/downloads_judgements/c.a._565_2011.pdf

Present:
Mr. Justice Umar Ata Bandial, CJ, **Mr. Justice Qazi Faez Isa,** Mr. Justice Syed Mansoor Ali Shah

In this case, the legal question before the apex Court of Pakistan was the interpretation of section 81 of the Customs Act, 1969.

This case involves the interpretation of section 81 of the Customs Act, 1969. At the time of the enactment of the Act in 1969 its section 81 was titled Provisional Assessment of Duty which was substituted in 2005 by Provisional Determination of Liability. Section 81 has undergone a number of changes from time to time, however, to the extent of these cases it has in substance remained the same.

Mr. Justice Qazi Faez Isa speaking for the bench observed that imported goods were assessed to duty when the bill of entry, later changed to goods declaration, was filed under section 80 of the Customs Act, 1969. If however imported goods could not immediately be assessed to duty they would be provisionally assessed/reassessed by the concerned officer of Customs and within the stipulated period finally assessed/reassessed. If within the stipulated period the goods could not be assessed/reassessed the Collector of Customs was empowered in exceptional circumstances to extend the period for final assessment/ determination. The law enables the Collector to extend the period 'in circumstances of an exceptional nature.

Further observed that subsection (4) to section 81 of the Customs Act, 1969 provides that if the final assessment is not completed within the specified given under subsection (2) to section 81 then provisional assessment shall become final. In other words, subsection (4) to section 81 is a penal provision incorporated in the scheme for the benefit of the assessees/ importers/exporters to save them from unnecessary harassment by the Customs Authorities by way of lingering on their cases for an indefinite period on the pretext of finalizing the assessment.

3. *Tassaduq Hussain Shah v. Allah Ditta Shah*

https://www.supremecourt.gov.pk/downloads_judgements/c.a._8_l_2009.pdf

Present:

Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar and Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

Documentary evidence takes precedence over oral evidence

The respondents, claiming to be 'Adna Maliks' and in possession of the land since their ancestors, filed a suit for declaration and possession of the land. They claimed benefit of the MLR of 1959, which declared Adna Maliks as landowners. The appellants contested the suit, stating that the respondents were their tenants. However, the appellants failed to provide any evidence of a landlord-tenant relationship. The Court noted the appellants' contradictory stance of claiming the respondents as tenants while also claiming to be self-cultivating the land. The Jamabandi of 1943-1944, an admitted document, showed the respondents as paying land revenue, indicating their rights as Adna Malikaan even before the MLR of 1959 was promulgated. The Supreme Court observed that documentary evidence takes precedence over oral evidence. The documentary evidence in the instant case clearly supports the stance of the respondents. The Court upheld the respondents' suit, dismissing the appellants' appeals.

4. *The State v. Chaudhry Muhammad Usman*

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._112_2020.pdf

Present:

Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail and Mrs. Justice Ayesha A. Malik

Meaning and scope of Section 94, CrPC, explained

The respondent was facing trial for certain offences. The trial court delivered the copies of the documents relied upon by the prosecution to him and adjourned the hearing for framing of the charge. The respondent made an application under section 265-C read with section 94 of the Cr.P.C., for directing the Drug Regulatory Authority, on whose complaint the criminal proceedings had been initiated, to produce 23 documents mentioned in the application. The respondent asserted that the Drug Regulatory Authority Act and the Drugs Act provided a legal mechanism for launching any prosecution thereunder, and that the said documents were necessary for the purpose of forming an opinion by the court as to whether the prosecution was lawful under the said Acts. The trial court dismissed the application of the respondent but the High Court allowed his revision petition.

The questions before the Supreme Court were: (i) whether before the commencement of the trial, an accused can apply to the trial court to exercise its power under section 94, Cr.P.C., and direct the prosecution or the complainant to produce any document, in its or his possession or power, which is not covered under section 265-C, Cr.P.C. and (ii) whether before entering on his defence, an accused can make an application for the production of any document under section 94 despite the provisions of section 265-F(7), Cr.P.C., which provides a similar opportunity to him at the stage of defence evidence.

The Court answered both the questions in the affirmative. Justice Syed Mansoor Ali Shah speaking for the bench observed that a bare reading of section 94, Cr.P.C. shows that there is no limitation as to the stage of the inquiry or trial when a court can, in the exercise of its power under this section, make an order for the production of any document. The only condition for the exercise of the power under section 94 is that the production of the document must be necessary or desirable for the purposes of the inquiry or trial before the court. Further, section 94 does not restrict as to on whose point of view, whether of the prosecution or the accused, the required document may be necessary or desirable for the purposes of the inquiry or trial. Any party may at any stage of the inquiry or trial apply to the court, under section 94, for the production of a document and is entitled to its production if it satisfies the court that the production of that document is necessary or desirable for the purposes of such inquiry or trial. It was further observed that there may be cases in which owing to dishonesty, negligence or any other reason, the prosecution does not produce certain documents with the police report, which may establish that there is no probability of the accused being convicted of any offence or the charge against the accused is groundless, and the production thereof is thus necessary or desirable for the purposes of the inquiry or trial. But because such documents are not filed with the police report, the same will not be supplied to the accused under section 265-C, Cr.P.C. In such cases, it would not be just and fair to the accused to reject his application for the production of such documents and to let him undergo the ordeal of protracted trial proceedings

and wait for the stage of defence evidence. Similarly, the documents which are not produced by the prosecution with the police report but are relevant to the matter under the inquiry or trial and to use them for his defence, the accused is legally required to confront the prosecution witnesses with those documents in their cross-examination. In such a circumstance also, it would be in the interest of justice that the application of the accused made under section 94 for their production is allowed. The Court said that the provision of subsection (7) of section 265-F, Cr.P.C., under which the accused, after entering on his defence, can apply to the trial court to issue any process for compelling the production of any document, does not in any way affect the power of the trial court under section 94(1), Cr.P.C. Section 94(1) affords both the parties to an inquiry or trial (not to the accused alone) the opportunity of causing the production of any document at any stage of such inquiry or trial, with the condition that the party applying for it must satisfy the court that the production of the required document is necessary or desirable for the purposes of the inquiry or trial. Section 265-F(7), on the other hand, only gives the accused another similar opportunity at the stage of his defence subject to a lesser condition, which is that his application should not be for the purpose of vexation or delay or defeating the ends of justice.

5. Commissioner Inland Revenue, Lahore v. M/s RYK Mills, Lahore

https://www.supremecourt.gov.pk/downloads_judgements/c.p._1842_l_2022.pdf

Present:

Mr. Justice Umar Ata Bandial, CJ, **Mr. Justice Syed Mansoor Ali Shah**, Mr. Justice Athar Minallah and Mr. Justice Syed Hasan Azhar Rizvi

Adjudication on the show cause notice can only be based on the grounds and allegations levelled therein

The petitioner department issued a show cause notice to the respondent company with the allegation that the respondent company had to charge Federal Excise Duty ("FED") at the rate of 8% on local supplies of white crystalline sugar but instead it charged 0.5% and as a consequence FED was short levied. The issue progressed through the tax hierarchy and tribunal, ultimately reaching the High Court, where the Excise Tax References were decided against the petitioner department.

Justice Syed Mansoor Ali Shah speaking for the bench observed that in the show cause notice issued by the petitioner department, the case set out against the respondent company was that it had charged 0.5% FED on the value of local supplies whereas it should have charged 8%. "No mention was made of SRO No.77(I)/2013 ("SRO"), or any non-compliance thereof, in the said show cause notice. In response to the said show cause notice, the respondent company pointed out that it had charged 0.5% FED on the basis of the SRO and therefore it was not liable to pay 8% FED on local supplies. Under the said SRO relaxation in the rate of FED is extended to the quantity of the local supply of sugar equivalent to the quantity exported by the sugar manufacturer. Despite raising the above new factual ground claiming benefit under the SRO, no fresh or supplementary show cause notice was issued to the respondent company seeking clarification as to the applicability of the SRO or whether the respondent company was entitled to the benefit of the SRO. Instead, the original adjudication by the Deputy Commissioner Inland Revenue proceeded on the basis of the already issued show cause notice and while deciding the same he addressed the issue of the SRO and held that two pre-conditions of the said SRO i.e. clauses (b) and (d) had not been complied with, which provide that the sugar manufacturer has to present proof of the sugar it has exported and that the benefit of the SRO shall not be admissible in respect of exports made through land routes to Afghanistan and the Central Asian Republics. These matters were extraneous to the show cause notice and the case set up by the department against the respondent company." The Court also dilated upon the significance and purpose of a show cause notice. It was observed that adjudication on the show cause notice can only be based on the grounds and allegations levelled therein. Where, in defence, the recipient raises substantial grounds or puts forth substantial factual aspects that are not covered in the initial show cause notice and, therefore, require further inquiry or verification by the department, then, after conducting such further inquiry or verification, a fresh or supplementary show cause notice should be issued to the taxpayer, if it is then so required. The petitions of the department were dismissed.

6. *Haji Tooti v. Federal Board of Revenue*

https://www.supremecourt.gov.pk/downloads_judgements/c.a._24_q_2014.pdf

Present:
Mr. Justice Umar Ata Bandial, Mr. Justice Syed Mansoor Ali Shah and **Mr. Justice Munib Akhtar**

The delicate balance between administrative functions and delegated Legislation in Customs Matters

In this case, two appeals arose under the Customs Act, 1969 ("Act") and raised the same questions of law, on facts that can broadly be regarded as similar. In the first appeal, the truck of the first appellant was confiscated on the ground that it was carrying smuggled goods. In the second appeal, a coach operated by the second appellant (and used to transport goods and passengers) was confiscated on the same ground. The charge of such smuggling stands established for present purposes in each case.

Justice Munib Akhtar speaking for the majority addressed the appellants' argument that SRO 574(I)/2005 was ultra vires section 223 of the Customs Act, 1969. The appellants claimed that the SRO unlawfully interfered with the discretion granted to customs officers under section 181, rendering it binding and depriving the officer of conferred discretion. Hon'ble Judge clarified that the order under section 181 is administrative, not quasi-judicial, and accepting the appellants' argument would render the second proviso of section 181 redundant. He further emphasized that appellants misunderstood section 223, stating it grants broad administrative power to the Federal Board of Revenue (FBR) to supervise tax authorities. The proviso ensures non-influence on quasi-judicial functions, making sense only when read in conjunction with the main part of section 223.

Justice Syed Mansoor Ali Shah (though agreed with the majority decision but with his reasons) pointed out a crucial distinction between the orders made by the Federal Board of Revenue ("Board") under the provisos to section 181 and the orders, instructions, or directions issued under section 223 of the Customs Act, 1969. That there are two distinct types of power: the former representing delegated legislative authority, while the latter merely recognizes the administrative supervisory power of the Board. Section 223 establishes that officers of customs must adhere to the orders, instructions, and directions of the Board. This provision acknowledges the Board's authority to issue administrative directives, but such acknowledgments do not impact the rights of third parties. On the other hand, section 181 provides the option for the owner of goods to pay a fine instead of facing confiscation, and its provisos empower the Board to specify goods or classes exempt from this option and determine the fine amount. The delegation of power under the provisos to the Board constitutes delegated legislation and directly influences the rights of third parties.

7. *Rehmat Noor v. Zulqarnain*

https://www.supremecourt.gov.pk/downloads_judgements/c.a._2121_2017.pdf

Present:
Mr. Justice Yahya Afridi and Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

Establishing a valid gift – evidenciary requirements

The appellant claimed that disputed property was gifted to her by her late brother during his lifetime and that she had accepted the same. Her suit was decreed by the trial court and this decision was affirmed by the appellate court. However, the revisional court reversed these findings.
Justice Yahya Afridi speaking for the bench observed that generally the courts follow a liberal approach towards evidence produced to prove the essential ingredients for a lawful gift, when it relates to one being gifted to a woman or minor child and that too by a close relative. However, in the present case, apart from the admission of the objecting-son (respondent-plaintiff) regarding the possession of the disputed property with the appellant (donee), there was no reliable evidence to prove the actual transaction of an offer made by late donor and the same being accepted by his sister (alleged donee), so as to constitute a valid gift being made. The evidence produced by the appellant-donee was essentially relating to the steps taken after the alleged oral gift was made, and in particular, the recording of the said gift in the revenue record. Proving the entry of the gift in the revenue record could never substitute evidence to prove the essential ingredients of the

original transaction of gift made by late donor to his sister (alleged donee).
It was held that the appellant failed to prove the instrument of gift mutation in line with the requirement of Article 79 of Qanun-e-Shahadat, 1984, as she examined only one witness of subject gift mutation, instead of two. Furthermore, neither the concerned Revenue Officer nor the Halqa Patwari was produced nor any effort was made for them to be produced through a court order. Original record of the mutation and Rapt Roznamcha was also not produced. Said deficiencies were enough to discredit the impugned mutation. Mutation has no presumption of correctness prior to its incorporation in the record of rights. Entries in mutation are admissible in evidence but the same are required to be proved independently by the persons relying upon it through affirmative evidence. Oral transaction reflected therein does not necessarily establish title in favour of the beneficiary. Mutation cannot by itself be considered a document of title. The Court came to the conclusion that there was no evidence produced by the appellant to substantiate her claim of receiving a valid gift of the disputed gift property from her deceased brother and the appeal was dismissed.

8. *Chief Secy: Govt of Balochistan v Masood Ahmed*

https://www.supremecourt.gov.pk/downloads_judgements/c.a._40_q_2018.pdf

Present:
Mr. Justice Amin-Ud-Din Khan and **Mr. Justice Jamal Khan Mandokhail**

Creation of a new post for the purpose of proforma promotion is a policy decision and the Service Tribunal(s) cannot exercise such executive authority

The case of Respondent No.1, an officer of BS-20 of the Government of Balochistan and serving in the Federal Government on deputation, for promotion was not considered for the reasons that he was on deputation, did not re-join his parent department, nor submitted his ACRs for the period of deputation. His promotion was deferred and instead Respondent No.2, who was junior to him, was promoted. Feeling aggrieved, Respondent No.1 filed an appeal before the Balochistan Service Tribunal ("Tribunal"). The Tribunal agreed with the findings of the competent authority regarding promotion of Respondent No.2, however, directed that Respondent No.1 be allowed proforma promotion in BS-21 as personal by creating a post through Finance Department after fulfilment of all the formalities through Provincial Selection Board.
The issue before the Supreme Court was with regard to the direction of the Tribunal to the Government for creation of a new post and promoting the Respondent No.1 against it.
Justice Jamal Khan Mandokhail speaking for the bench observed that under section 5(1) of the Service Tribunals Act, 1973 ("Act"), the Tribunal on an appeal of an aggrieved person, is empowered to confirm, set aside, vary, or modify the order appealed against. The power of the Tribunal has been enshrined in the Act; thus, it cannot go beyond what the law states. Creation of a post is a policy decision, based upon the requirements of a department and involves economic factors, which is the sole discretion and executive authority to be exercised by the Government alone. The Tribunal cannot assign to itself such executive function, nor can it grant relief not provided under the law. It is supposed to apply the law in its true letter and spirit, but through the impugned judgment the Tribunal has entered into the domain of the Executive. Exercising such power beyond its mandate is a dangerous trend, which must be discouraged. Even otherwise, promotion of an officer in selection grades is based upon the principle of fitness-cum-seniority, which depends upon multiple factors, as per the service rules based upon the service record of the incumbent. These factors can only be determined by the Selection Board and upon its recommendations, it is the prerogative of the Government to agree or disagree with such recommendations. However, in case of disagreement, reasons must be assigned by the competent authority. The Court held that directing the Government to create a new post and grant proforma promotion to Respondent No.1 amounts to exercise of power in excess of the Tribunal's authority, which is without jurisdiction.

9. *Muhammad Hanif v. State*

https://www.supremecourt.gov.pk/downloads_judgements/crl.a._528_2019.pdf

Present:
Mr. Justice Umar Ata Bandial, Mr. Justice Munib Akhtar and **Mr. Justice Sayyed Mazahar Ali Akbar Naqvi**

Primacy of eyewitness testimony

The instant decision presents a thorough exploration of the legal intricacies associated with the Anti-Terrorism Act, 1997, particularly emphasizing the jurisdiction and application of this Act within the Pakistani legal system. In this case, Muhammad Hanif, the appellant, appealed against the Lahore High Court's decision which had upheld his conviction under various sections of the Pakistan Penal Code (PPC) and the Anti-Terrorism Act, 1997. The High Court, while maintaining the conviction for the incident that occurred on June 12, 2009, at the court premises in Dera Ghazi Khan, modified his death sentence to life imprisonment. The factual background of the case, as presented by the prosecution, involved Hanif firing upon a police officer within the court premises, resulting in the officer's death.

Justice Sayyed Mazahar Ali Akbar Naqvi, speaking for the Court, focused significantly on the jurisdiction of Anti-Terrorism Courts, clarifying that these courts are well within their rights to try offenses categorized as 'terrorism' under the Act. The Court meticulously interpreted the definition of terrorism as per Section 6 of the Anti-Terrorism Act, which encompasses actions causing death, serious violence against police or public servants, and the use of firearms or explosives. This broad interpretation was crucial, as Hanif's actions fell squarely within this definition.

A pivotal aspect of the judgment was the Court's approach towards the appreciation of ocular and forensic evidence. The Court accorded greater evidentiary value to eyewitness accounts, even in instances where these accounts conflicted with site plans or forensic evidence, thereby reinforcing the primacy of direct observation in criminal proceedings. This stance highlights the Court's preference for the reliability of ocular witness testimony over potential forensic discrepancies.
In its judgment, the Supreme Court cited various legal precedents to establish and reinforce the principles for evaluating evidence, especially in cases related to terrorism. The Court's reliance on past rulings emphasized the importance of direct witness accounts over technical evidence in criminal trials. The appeal was dismissed thereby upholding sentence of life imprisonment.

10. Said Nabi v. Ajmal Khan

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._104_p_2023.pdf

Present:
Mr. Justice Yahya Afridi, **Mr. Justice Sayyed Mazahar Ali Akbar Naqvi** and Mr. Justice Muhammad Ali Mazhar

Abscondence and parity in bail decisions

In the Supreme Court of Pakistan's decision regarding principles relevant to bail considerations, particularly in cases involving abscondence and the parity among co-accused. The petitioner, Said Nabi, challenged the refusal of post-arrest bail by the Peshawar High Court. He was implicated under multiple sections of the Pakistan Penal Code, including Section 302 (murder). The primary argument revolved around false implication and the acquittal of similarly charged co-accused.

Justice Sayyed Mazahar Ali Akbar Naqvi, speaking for the Court emphasized the relevance of abscondence in bail decisions, referencing The State Vs. Malik Mukhtar Ahmed Awan (1991) to illustrate that while abscondence is a factor, it should not justify indefinite detention. It also invoked Rasool Muhammad Vs. Asal Muhammad (PLJ 1995) to explain that fleeing in murder cases can be a natural response. Crucially, the Court applied the parity principle, highlighting the need for consistent treatment of similarly situated accused. It noted the generalized nature of allegations against the petitioner, underscoring the lack of specific evidence or incriminating material. Ultimately, the Court granted bail to the petitioner, subject to the furnishing of bail bonds, and clarified that its observations were tentative, not prejudicing the ongoing trial proceedings. This decision underscores the Supreme Court's approach in balancing the rights of the accused with the demands of justice, stressing the necessity for specific evidence rather than generalized allegations in criminal adjudication.

11. Mst. Faheeman Begum v. Islam-ud-Din

https://www.supremecourt.gov.pk/downloads_judgements/c.a._1300_2019.pdf

Present:

Mr. Justice Sardar Tariq Masood and **Mr. Justice Muhammad Ali Mazhar**

Revisional jurisdiction is pre-eminently corrective and supervisory in nature

The appellants filed a civil appeal challenging the Lahore High Court's judgment that dismissed their suit for declaration and permanent injunction against the respondents. The appellants claimed co-ownership of a share in an agricultural property and sought to set aside a mutation as unlawful. The High Court noted the suit was time-barred as it was filed almost 15 years after the disputed mutation. The High Court's revisional jurisdiction under section 115 of the Code of Civil Procedure, 1908, allows it to correct jurisdictive errors committed by a subordinate court. The High Court held that the appellant had no standing to challenge the mutation's legality on a vague fraud allegation when it had been given effect in the revenue record. The Supreme Court observed that appellants had no locus standi to challenge the legality of the (gift) mutation on a vague allegation of fraud when the donor had never challenged the same in her life time and the mutation had been given effect in the revenue record. The civil appeal was dismissed as the appellants' counsel could not demonstrate any error or legal defect in the judgment.

12. Muzafar Iqbal v. Mst. Riffat Parveen

https://www.supremecourt.gov.pk/downloads_judgements/c.a._307_2017.pdf

Present:

Mr. Justice Umar Ata Bandial, CJ and **Mr. Justice Muhammad Ali Mazhar**

Jurisdiction of a High Court under Section 100 CPC is meant to decide substantial question of law and not pure question of fact

The appellant filed a civil appeal against the Lahore High Court's judgment that allowed the respondents' second appeal, overturning concurrent findings of the lower courts. The Supreme Court observed that the High Court, in its judgment, did not identify any substantial question of law, appreciate the evidence, or point out any formal defect in the concurrent findings of the lower courts. Instead, it based its reasoning on conjectures and set aside the concurrent findings, which is not endorsed. According to section 100 of the C.P.C., a second appeal may be preferred in the High Court against a decree passed in appeal on certain grounds. The jurisdiction of a High Court under section 100, C.P.C. is limited to appeals involving a substantial question of law. The requirements of Order XLI, Rule 31, C.P.C. must be complied with, but substantial compliance is sufficient for the safe administration of justice. The litmus test is whether the controversy has been decided with proper appraisal, weighing, and balancing of the evidence and law. The right of appeal ensures justice through multiple checks and balances. There's a distinction between two appellate jurisdictions: section 96, C.P.C., allows the Appellate Court to question facts, while section 100 confines the High Court to questions of law. The High Court cannot substitute its standpoint for the first Appellate Court's unless the conclusion is erroneous or leads to a miscarriage of justice. It cannot initiate a roving enquiry into facts to upset the first Appellate Court's findings. Consequently, the civil appeal was allowed and the impugned judgment of the High Court was set aside and matter was remanded to the High Court to redicde the matter keeping in view above paramters.

13. Mohammad Boota v. Mst. Fatima

https://www.supremecourt.gov.pk/downloads_judgements/c.a._419_2011.pdf

Present:

Mr. Justice Umar Ata Bandial, CJ, **Mrs. Justice Ayesha A. Malik** and Mr. Justice Athar Minallah

Retrospective applicability of sharia law in inheritance matters

This judgment by the Supreme Court of Pakistan addresses a pivotal issue concerning the succession of tenancy rights under Islamic Sharia law versus the Colonization of Government Lands (Punjab) Act, 1912. The dispute involved the inheritance rights of daughters to tenancy in land originally awarded under the Abadkari Scheme to Din Muhammad, and later inherited by his brothers' sons, including Gohar Ali, the father of the appellants and respondents.

The legal crux of the case revolves around whether the succession to Din Muhammad's tenancy is governed by Section 20 of the Colonization Act or Islamic Sharia law. The appellants argued that, under Section 20, the tenancy rights should exclusively pass to male lineal descendants, contending that Sharia law

was inapplicable at the time of Din Muhammad's death. The respondents, represented ex-parte and through amicus curiae, contested that Sharia law governed succession matters, even prior to the 1951 amendment to the Colonization Act which explicitly stated that succession for Muslims would follow Sharia law.

Justice Ayesha A. Malik, speaking for the Court, examined the historical and legal context, including the Punjab Laws Act, 1872, the Muslim Personal Law Shariat Application Act of 1948, and subsequent amendments. It emphasized that before the 1951 amendment, Sharia law governed succession for Muslims unless a specific custom was established. The Court determined that even though Din Muhammad died before 1951, the applicability of Sharia law was retrospective. The judgments of the High Court, which decreed the suits of the sisters based on Sharia law, were upheld.
The Court dismissed the appellants' alternative plea to be considered as original tenants and their objections regarding limitation, emphasizing that mutation in favor of male heirs contrary to Sharia law does not confer title. The Court concluded that the appellants, as male heirs, could not exclude their sisters from inheritance as per Sharia law, which was applicable retrospectively.
This judgment reaffirms the supremacy of Sharia law in matters of Muslim succession in Pakistan, emphasizing its retrospective application even before formal legislative acknowledgment. It underscores the principles of gender equality in inheritance rights under Islamic law, reflecting a significant legal and social stance in the context of women's inheritance rights in Pakistan.

14. M. Hamad Hassan v. Mst. Isma Bukhari

https://www.supremecourt.gov.pk/downloads_judgements/c.p._1418_2023%20.pdf

Present:
Mrs. Justice Ayesha A. Malik and Mr. Justice Syed Hasan Azhar Rizvi

Restrictions on high court's constitutional jurisdiction as substitute for appeal

In the instant judgment, the Supreme Court of Pakistan, addressed the scope and limitations of the High Court's constitutional jurisdiction under Article 199 of the Constitution. The petition, filed against a decision of the Peshawar High Court, raised questions about the High Court's role in re-examining factual findings of lower courts.
The case originated from a family court dispute where Respondent No.1, Mst. Isma Bukhari, filed a suit for recovery of dower, maintenance allowance, and dowry articles against the petitioner. The family court's decision, which was upheld by the appellate court, granted the respondent's claims, including maintenance and dower. The petitioner challenged these decisions in the High Court under Article 199 of the Constitution, alleging factual errors. The High Court, however, dismissed the petition.

Justice Ayesha A. Malik, delineated the evolution of the High Court's constitutional jurisdiction. Initially, in Muhammad Hussain Munir v. Sikandar (1974), the Court held that the High Court could intervene only in cases of jurisdictional defects. This position was expanded in Utility Stores Corporation of Pakistan Limited v. Punjab Labour Appellate Tribunal (1987) to include errors of law as jurisdictional issues. Later, Muhammad Lehrasab Khan v. Mst. Aqeel-Un-Nisa (2001) further extended this power to cases where lower court findings were based on misreading or non-reading of evidence, or arbitrary exercise of power.
However, this expansive interpretation was scaled back in Shajar Islam v. Muhammad Siddique (2007), emphasizing that the High Court should not interfere in factual findings unless there was a miscarriage of justice due to misreading or non-reading of evidence. Recent judgments, including Mst. Tayyeba Ambareen and another v. Shafqat Ali Kiyani and another (2023) and Arif Fareed v. Bibi Sara and others (2023), have reaffirmed this restrained approach, cautioning against using constitutional jurisdiction as a substitute for appellate or revisionary jurisdiction.
Applying these principles to the present case, the Supreme Court observed that the High Court erred in re-adjudicating on facts, which is outside the mandate of Article 199. The Court emphasized that the High Court's role is to correct wrongful or excessive exercise of jurisdiction by lower courts, not to re-examine facts or replace appellate court's opinions. The Supreme Court underscored the importance of respecting the finality of appellate court decisions in family cases to avoid prolonging disputes and to uphold the legislature's intent for

efficient and expeditious resolution of legal matters.

Consequently, the Supreme Court dismissed the petition and declined leave, reinforcing the principle that constitutional jurisdiction under Article 199 should not be used to re-litigate or re-assess factual determinations made by trial and appellate courts.

15. Commissioner Inland Revenue v. M/s Al-Abid Silk Mills Ltd

https://www.supremecourt.gov.pk/downloads_judgements/c.a._1032_2018.pdf

Present:

Mr. Justice Umar Ata Bandial, CJ, Mrs. Justice Ayesha A. Malik and **Mr. Justice Athar Minallah**

Inadequate show cause notice

Pursuant to a report of the Directorate General, Intelligence and Investigation ("I & I"), the Deputy Commissioner Inland Revenue served a show cause notice upon the respondent, engaged in the business of manufacturing and export. It was alleged that eight distinct entities, described in the show cause notice, were allegedly involved in the issuance of fake/flying invoices and they had not deposited the tax in the treasury. It was further alleged that the respondent had claimed input tax against invoices issued by the said eight distinct suppliers. It was, therefore, assumed that the invoices relating to supplies made by the eight entities were fake/flying. The respondent was, therefore, called upon, through the show cause notice, to explain why the input tax claimed against the alleged fake/flying invoices should not be recovered along with the default surcharge and additional tax. The show cause notice was adjudicated against the respondent. The appeals preferred before the Commissioner (Appeals) and the Appellate Tribunal Inland Revenue did not succeed. However, the High Court answered the reference against the Department.

Justice Athar Minallah speaking for the bench observed that the show cause notice was issued in a mechanical manner. The allegations were vague and the facts had not been verified. Moreover, the respondent was asked to establish that its suppliers i.e. the eight distinct entities had not made supplies and that they had not deposited the output tax in the government treasury. It was on this basis that it was presumed that the invoices were fake/flying and thus the input tax adjusted against such invoices was alleged to be inadmissible. The respondent was further asked to produce documents which were not required to be maintained under the Act at the relevant time. The Court said that before the issuance of the show cause notice no meaningful effort was made by the sales tax officials to conduct an audit nor was a proper inquiry made by exercising powers conferred under the Act in order to verify the allegations made in the report. The show cause notice was based on vague allegations and an assumption that since some of the supplies were made by the eight entities which were involved in the issuance of fake/flying invoices, therefore, the invoices relating to such supplies must also have been of the same status. When the Department alleges that a registered person is liable to make the payment of tax and the same has not been levied or charged, the former is burdened with a statutory duty to establish before the adjudicating forum, through persuasive and proper evidence, that the allegations are highly probable to be true, rather than being unreliable, false or doubtful. In the case at hand, the onus was on the Department to first establish that the eight suppliers had not made actual supplies and, thus, the invoices against which the input was claimed were fake/flying invoices. It was also the Department's responsibility to verify whether or not the eight entities had deposited the sales tax in the government treasury relating to the invoices against which the respondent had claimed input tax. The appeal filed by the Department was dismissed.

16. Compliance report of Secretary, Law & Justice Commission of Pakistan

https://www.supremecourt.gov.pk/downloads_judgements/crl.m.a._1566_2016.pdf

Present:

Mr. Justice Umar Ata Bandial, CJ and **Mr. Justice Athar Minallah**

Constitutional duty of the state to ensure humane conditions and rights of prisoners: emphasis on right to life and probation

The matter related to the implementation of the enforced enacted laws regarding the release of inmates from the prisons on the basis of 'probation'.

Justice Athar Minallah speaking for the bench observed that grave conditions affecting the fundamental rights prevail in the prisons across the country. The judgment expressed

dissatisfaction with the non-functional criminal justice system, particularly its exploitation by the privileged, while marginalized individuals struggle to access justice. The unacceptable living conditions in overcrowded prisons were deemed incompatible with the constitutional guarantee of inexpensive and expeditious justice. It was said that there are two categories of prisoners, convicted and non-convicted, emphasizing the presumption of innocence for the latter. The judgment emphasized the State's duty of care to every prisoner, regardless of their offense, to safeguard the right to life and ensure humane treatment. The judgment also stressed the importance of enforcing laws related to probation, asserting that neglecting these obligations amounts to a breach of the State's duty of care, potentially exposing authorities to legal action by inmates for damages.

The Court issued three key directives to the government: Firstly, it declared that the neglect or refusal to enforce laws related to the release of a prisoner on probation violates fundamental rights guaranteed under the Constitution. Secondly, the Chief Executives of the Federal Government and provinces were directed to ensure the effective implementation of these laws. Lastly, the Federal and Provincial Governments were instructed to promptly identify eligible prisoners under the enacted laws for release on probation and expedite the processing of their cases.

17. M/s Bentonite (Pakistan) Ltd. v. Bankers Equity Ltd. Karachi

https://www.supremecourt.gov.pk/downloads_judgements/c.p._1123_2020.pdf

Present:
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din Khan and **Mr. Justice Syed Hasan Azhar Rizvi**

Any application filed under the Companies Act, 2017 would be governed by Article 181 of the First Schedule to the Limitation Act, 1908

The petitioner company defaulted on a financing facility provided by respondent bank. The respondent filed a recovery suit, which was dismissed due to non-compliance with the Financial Institutions (Recovery of Finances) Ordinances, 2001. After multiple appeals and an amended suit, the Lahore High Court passed a final decree in favour of respondent. The petitioner also filed a damages suit against respondent, which was consigned to record pending leave from the Company Judge. After 17 years, the petitioner sought to revive the suit, but the application was dismissed by the High Court of Sindh. The Supreme Court observed that it was in the knowledge of the petitioner since 2002, however, instead of approaching the Company Judge for seeking permission, the petitioner chose to abandon it for about 17 years and for this, no plausible explanation was given, which shows that the conduct of the petitioner is to frustrate the liquidation proceedings pending against respondent before the Company Judge in the High Court of Sindh. Besides, in view of Article 181 of the Limitation Act, 1908 ibid, they could have filed such application within three years and not beyond that. The findings of fact rendered by the Company Judge of High Court of Sindh are based on sound and cogent reasoning and we are in agreement with the same. The petitioner has not been able to make out a case justifying interference by this Court.

Foreign Superior Courts

High Court of Justice King's Bench Division Administrative Court

1. Syed v. Government of Switzerlnad

https://assets.caselaw.nationalarchives.gov.uk/ewhc/admin/2023/2376/ewhc_admin_2023_2376.pdf

Before:
Mrs. Justice Farbey

Balancing the liberty and the law

The applicant was born in Hyderabad in India on 23 April 1973. He has applied to the High Court for bail following the decision of District Judge under Part 2 of the Extradition Act 2003, to send the case brought by the respondent under section 87(3) of the Act to the Secretary of State for her decision whether to make an extradition order.

The Court dismissed the application while holding that the court does not accept that there is a direct or useful comparison between his situation in Bahrain, and his situation if released on bail in London. At no point in Bahrain was the applicant under bail conditions when at risk of extradition. As for the position in Switzerland, it appears that the applicant is more likely to be granted some form of liberty if he were to consent

to extradition. That position is not surprising nor unprincipled. The more important point is that the applicant is not in any event consenting but persists in seeking to appeal the District Judge's decision. Any benefits of consenting to extradition would not be bestowed on him.

Although the applicant does not accept the outcome of the extradition proceedings before the District Judge, it is accepted that a High Court bail application is not the appropriate forum for an examination of factual detail. On the legal merits of any appeal, the Court was not persuaded that the District Judge's analysis of any material issue was so egregiously wrong that it should weigh in the scales in favour of bail. At any rate, nothing has been drawn to the Court's attention in the District Judge's reasoning that would outweigh the factors against the grant of bail at this stage.

These various factors mean that, despite the conditions offered, there remain in my judgment substantial grounds to believe that if granted bail the applicant would fail to surrender to custody. It was added that there is nothing in the nature of his family or other ties in the UK that would make it disproportionate for him to remain in custody.

SUPREME COURT OF CANADA

2. *Anderson v. Anderson*

2023 SCC 13
https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/19906/index.do

Coram:

Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal and O'Bonsawin JJ.

Supreme Court clarifies when courts must consider certain domestic agreements in dividing family property under Saskatchewan's legislation

The Andersons, married in Saskatchewan and separated in 2015, had an agreement where they would keep their individual properties except for the jointly owned family home and household goods. This agreement was signed without legal advice and witnessed by two friends. Ms. Anderson filed for divorce, and Mr. Anderson counter-filed, contesting the agreement's validity due to the absence of legal advice and alleged duress.

Under The Family Property Act (FPA) of Saskatchewan, family property is typically divided equally unless an interspousal contract exists, which requires formal acknowledgment and understanding of the agreement by both parties with legal advice. The Andersons' agreement, lacking legal counsel, didn't qualify as an interspousal contract under the FPA.

The trial judge ruled the agreement non-binding due to the lack of legal advice and divided the couple's assets equally, resulting in Ms. Anderson owing Mr. Anderson about $90,000. However, the Saskatchewan Court of Appeal overturned this, citing the Supreme Court's framework in Miglin v. Miglin and considering the agreement binding, leading to Mr. Anderson owing Ms. Anderson approximately $5,000.

The Supreme Court, allowing Mr. Anderson's appeal, found the agreement binding and criticized the trial judge's disregard of it. Justice Karakatsanis stressed that domestic contracts, even those made under emotional stress, should generally be respected and supported by courts, barring compelling reasons against them. The agreement, deemed uncomplicated and reflecting the parties' intention for a clean break, was given effect despite the absence of independent legal advice and Mr. Anderson's inability to show prejudice from this lack.

Ultimately, the Supreme Court upheld the agreement, ordering the equal division of the family home and household goods as of the trial date, with Ms. Anderson paying Mr. Anderson around $43,000. This decision reinforces the importance of autonomy and finality in family law, emphasizing the validity of domestic contracts even in emotionally stressful situations and without independent legal advice, provided they are not fundamentally unfair or prejudicial.

HIGH COURT OF AUSTRALIA

3. *BDO v The Queen*

[2023] HCA 16
https://eresources.hcourt.gov.au/downloadPdf/2023/HCA/16

Coram:
Kiefel CJ, Gordon, Steward, Gleeson and Jagot JJ..

Distinction between capacity and actual knowledge in youth crime

The High Court of Australia unanimously allowed an appeal in part from the Court of Appeal of the Supreme Court of Queensland regarding the criminal responsibility of an appellant for acts committed between the ages of ten and fourteen. The key issue was the interpretation of section 29(2) of the Criminal Code (Qld), which concerns rebutting the presumption of incapacity for children in this age group.

At common law, this presumption can be countered by proving that the child knew their actions were morally wrong. However, under the Code, the presumption may be rebutted by demonstrating the child's "capacity to know" they should not perform the act in question. The appellant was convicted in the District Court of Queensland for 11 counts of rape, with the trial judge instructing the jury according to the terms of section 29, focusing on the appellant's capacity rather than actual knowledge.

The appellant's subsequent appeal was dismissed by the Court of Appeal, which held that the jury correctly determined whether the appellant, for each count, was under 14 years of age and, if so, whether he had the capacity to know his actions were wrong. The Court concluded that the jury could reasonably infer from the evidence that the appellant knew his actions were wrong.

The High Court, however, allowed the appeal for five of the counts. For these counts, it set aside the Court of Appeal's decision and entered acquittals. The High Court found no error in the lower courts' interpretation of section 29(2) of the Code, clarifying that it requires proof of the child's capacity to understand the moral wrongness of their actions, rather than actual knowledge. The Court emphasized that this capacity usually relies on inferences from evidence about the child's intellectual and moral development. However, the High Court found insufficient evidence to rebut the presumption of incapacity for these five counts and determined that a retrial was inappropriate as the prosecution should not be given another opportunity to enhance its case.

4. BA v the King

[2023] HCA 14
https://eresources.hcourt.gov.au/downloadPdf/2023/HCA/14

Coram:
Kiefel CJ, Gageler, Gordon, Edelman, Steward, Gleeson and Jagot JJ.

Consent of occupant not a condition for lawful entry by co-tenant

The High Court of Australia, by majority, allowed an appeal from the Court of Criminal Appeal of the Supreme Court of New South Wales. The case centered on the interpretation of section 112 of the Crimes Act 1900 (NSW), specifically whether a person must be a trespasser to commit an offense of breaking and entering a dwelling-house and committing a serious indictable offense therein.

The appellant, co-tenant of an apartment with the complainant under a residential tenancy agreement, was in a domestic relationship with the complainant. After their relationship ended in May 2019, the appellant moved out but remained on the lease. In July 2019, following a dispute, the appellant forcibly entered the apartment, assaulted the complainant, and damaged her phone. He pleaded guilty to common assault, intimidation, and property destruction but not guilty to the offense under section 112, as he was still a tenant with a right to enter the premises.

The trial judge directed a verdict of not guilty on the section 112 count, stating that the appellant, being a tenant, had the right to enter the apartment and thus could not be guilty of breaking and entering his own premises. However, the Court of Criminal Appeal reversed this decision, holding that an entry into a dwelling-house under a pre-existing right can still be a "break" if done without the consent of the actual occupant.

The High Court allowed the appeal, ruling that the elements of "breaks and enters" in section 112(1)(a) necessitate a trespass, which means entering another's premises without lawful authority. The Court found that the appellant's tenancy agreement granted him lawful authority to enter the apartment, and this right wasn't contingent on the complainant's consent or negated by his prior move-out and ceased occupation. The appellant's forceful entry, while it would be a "break" in the absence of such authority, did not constitute a trespass due to his ongoing legal right as a tenant under the lease. Thus, the High Court concluded that the appellant could not be guilty under section 112

based on the circumstances of his tenancy agreement and lawful entry rights.

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

5. *City of Tshwane Metropolitan Municipality v. Vresthena (Pty) Ltd & Others*

(Case no 1124/2022) [2023] ZASCA 104 (22 June 2023)
https://www.supremecourtofappeal.org.za/index.php/component/jdownloads/send/48-judgment-2023/4066-city-of-tshwane-metropolitan-municipality-v-vresthena-pty-ltd-others-1124-2022-2023-zasca-104-22-june-2023?Itemid=0

Coram:
Saldulker, Mothle, Matojane and Molefe Jja and Daffue Aja

Single automatic right of appeal in specific legal circumstances

The Supreme Court of Appeal (SCA) struck a matter from its roll, involving an appeal from the Court of Criminal Appeal of New South Wales, addressing the construction of section 70.2(5) of the Criminal Code (Cth) related to bribery offenses. The issue was whether the provision allows for a second automatic right to appeal against an order granted under section 18(3) of the Superior Court Act 10 of 2013, with further appeals being possible.

The case involved Vresthena (Pty) Ltd, which owned units in Zambesi Retail Park, sharing a single electricity supply point. The City of Tshwane Metropolitan Municipality, which provides electricity, issued disconnection notices for non-payment, leading to disconnections in April 2022. Vresthena sought a court order to restore services and review its application for a separate connection.

The High Court granted an interim order to restore services, allowing Vresthena to reconnect electricity if the Municipality failed to comply. The Municipality's subsequent appeal was granted, but the High Court also ordered the interim order to be executed while the appeal decision was pending. The Municipality exercised its right of appeal under section 18(4) of the Act against this execution order. The full court rejected this appeal and allowed the main order's implementation during the appeal.

The Municipality then appealed to the SCA, arguing for a broader interpretation of the phrase 'next highest court' in section 18(4) of the Act to include more than one court of appeal. Vresthena countered that section 18(4) allows only one appeal to the immediately superior court, rendering the Municipality's appeal irregular and void.

The SCA held that section 18(4) establishes a unique category of appeals for orders made under section 18(3), intended for exceptional circumstances where irreparable harm would result from suspending a decision's operation and execution. It clarified that the language of section 18(4)(ii) implies a singular meaning, allowing only one automatic appeal to the 'next highest court,' not multiple appeals. The clear wording does not warrant a wider interpretation and aligns with constitutional principles.

Concluding that the Municipality's notice of appeal was irregular and void, the SCA struck the matter from the roll, awarding costs, including those of two counsel where employed.

6. *Police, Roads and Transport Free State Provincial Government v. Bovicon Consulting Engineers CC and Another*

(278/2022) [2023] ZASCA 99 (14 June 2023)
https://www.supremecourtofappeal.org.za/index.php/component/jdownloads/send/48-judgment-2023/4061-mec-police-roads-and-transport-free-state-provincial-government-v-bovicon-consulting-engineers-cc-and-another-278-2022-2022-zasca-99-14-june-2023?Itemid=0

Coram:
PETSE AP and GORVEN and MABINDLA-BOQWANA JJA and KATHREE-SETILOANE and MASIPA AJJA

Accrual of post-judgment interest until full debt payment

The Supreme Court of Appeal (SCA) dismissed an appeal by the MEC: Police, Roads, and Transport, Free State Provincial Government (the MEC) against a judgment of the Free State Division of the High Court, Bloemfontein. The High Court had ruled in favor of Bovicon

Consulting Engineers CC (Bovicon), awarding them post-judgment interest for services provided to the MEC, for which payment was delayed.

Bovicon had obtained a judgment against the MEC on 5 December 2019 for unpaid services, but the MEC only made payment on 14 July 2020. Bovicon then claimed post-judgment interest from the date of judgment until payment was made. After Bovicon issued a warrant of execution resulting in the attachment of the Department's movable property, the MEC sought to set aside the warrant, citing non-compliance with the State Liability Act. The High Court set aside the warrant and declared the attachment unlawful but awarded Bovicon post-judgment interest at 15.5%. It also imposed punitive costs against the MEC without providing specific reasons for this order.

The SCA addressed three main issues: whether the judgment debt was fully settled by the MEC's payment, the applicable interest rate at the time of judgment, and the appropriateness of the High Court's punitive costs order. The SCA affirmed that interest accrues post-judgment until full payment and agreed on the prevailing interest rate at the time of the High Court's judgment. It noted the MEC's acceptance that cost awards are at the court's discretion and are not usually interfered with unless there is material misdirection. However, the SCA criticized the High Court for not providing reasons for the punitive costs order and emphasized the necessity for courts to justify their decisions.

Regarding the inappropriate granting of leave to appeal to the SCA, the SCA found that the High Court had disregarded the provisions of the Superior Court Act, which mandates that leave to appeal should only be granted in cases involving significant legal questions, conflicting judgments, or matters needing SCA consideration. The SCA criticized the High Court for this oversight and warned that it might consider setting aside future appeals granted in disregard of these provisions. Consequently, the SCA dismissed the MEC's appeal and upheld the award of post-judgment interest to Bovicon.

FEDERAL CONSTITUTIONAL COURT OF GERMANY

7. In the proceedings about the constitutional complaint . . .

2 BvR 825/23
https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2023/09/rk20230921_2bvr082523.html

Coram
Kessal-Wulf, Wallrabenstein and Offenloch JJ

Successful constitutional complaint in the event of an excessively long period of detention review proceedings

The constitutional complaint pertained to a prisoner on remand, suspected of economic crimes, continuously held in custody since June 30, 2022. The Higher Regional Court, despite receiving files for detention review on December 28, 2022, extended the pre-trial detention only on June 26, 2023. The complainant challenged the delay, citing a violation of his fundamental rights, particularly the right to freedom and effective legal protection.

The primary issues revolved around the excessive duration of habeas corpus proceedings. The complainant alleged a breach of his fundamental rights, contesting the Higher Regional Court's failure to decide by June 26, 2023. Key legal contentions included the violation of Article 2 Paragraph 2 in conjunction with Article 104 (right to freedom) and Article 19 Paragraph 4 (right to effective legal protection) of the Basic Law.

The Federal Constitutional Court, in upholding the constitutional complaint, found it admissible, emphasizing the ongoing need for legal protection due to the prolonged habeas corpus proceedings. The decision to continue detention did not negate the complainant's right to challenge the violation of effective legal protection under Article 19 Paragraph 4. The Court affirmed the complaint's merit, asserting that the extended duration of the habeas corpus proceedings violated the complainant's fundamental right to effective legal protection. It highlighted that the delay deprived the complainant of both the legally required six-month and nine-month reviews, essential in pre-trial detention cases. The reasons provided by the Higher Regional Court for the delay were deemed insufficient, as they did not justify the

prolonged denial of legal protection within a reasonable time. The Federal Constitutional Court upheld the complainant's fundamental rights, declaring the excessive duration of the habeas corpus proceedings unconstitutional and affirming the right to effective legal protection.

EUROPEAN COURT OF HUMAN RIGHTS

8. *Glukhin v Russia*

ECHR 206 (2023)
https://hudoc.echr.coe.int/#{%22itemid%22:[%22001-225655%22]}

Present:
Pere Pastor Vilanova, President, Jolien Schukking, Yonko Grozev, Georgios A. Serghides, Peeter Roosma, Andreas Zünd, Oddný Mjöll Arnardóttir, and Milan Blaško, Section Registrar.

Facial recognition violates freedom of expression and privacy

The applicant, Nikolay Sergeyevich Glukhin, travelled on the Moscow underground with a life-size cardboard figure of Konstanin Kotov, a protestor whose case had caused a public outcry and had attracted widespread attention in the media, holding a banner that said, "I'm facing up to five years … for peaceful protests". During routine monitoring of the Internet, the police discovered photographs and a video of the applicant's demonstration in the underground uploaded on a public social-media site. According to the applicant, they must have used facial-recognition technology to identify him from screenshots of the social-media site, collected footage from closed-circuit television (CCTV) surveillance cameras installed in the stations of the Moscow underground through which he had transited on 23 August 2019, and, several days later, used live facial-recognition technology to locate and arrest him while he was travelling in the underground. The applicant was subsequently convicted in administrative-offence proceedings for failure to notify the authorities of his solo demonstration using a "quickly (de)assembled object". He was fined 20,000 Russian roubles. The screenshots of the social-media site and of the video recordings from the CCTV surveillance cameras were used in evidence against him.
The Moscow City Court upheld his conviction on appeal, finding in particular that the peaceful nature of his demonstration was irrelevant and that the offence had been discovered and evidence had been collected in accordance with the Police Act.
The applicant complained that his administrative conviction and the use of facial-recognition technology in the processing of his personal data had breached his rights under Articles 8 (right to respect for private life) and 10 (freedom of expression) of the European Convention of Human Rights ("ECHR"). In addition, relying on Article 6 (right to a fair trial), he complained that the proceedings against him had been unfair because there had been no prosecuting party. The European Court of Human Rights ("ECtHR") found that Russia violated the applicant's right to freedom of expression (guaranteed in Article 10) and his right to private and family life (under Article 8). The ECtHR stated that although it was difficult for the applicant to prove his allegation that facial recognition technology had been used in his case, there was no other explanation for the police having identified him so quickly after his protest. It also noted that Russia did not deny that they used facial recognition technology in this case and that there was a magnitude of reports on cases when protesters in Russia were identified through facial recognition technology. The ECtHR concluded that the processing of the applicant's personal data in the context of his peaceful protest, which had not caused any danger to public order or safety, had been particularly intrusive. The use of facial recognition technology in his case had been incompatible with the ideals and values of a democratic society governed by the rule of law.
Given the findings under Articles 8 and 10 of the ECHR, the ECtHR said that there was no need to give a separate ruling on complaints under Article 6. The ECtHR held that Russia was to pay the applicant 9,800 euros (EUR) in respect of non-pecuniary damage, and EUR 6,400 in respect of costs and expenses.

EUROPEAN COURT OF HUMAN RIGHTS

9. *Hurbain v Belgium*

ECHR 208 (2023)
https://hudoc.echr.coe.int/#{%22itemid%22:[%22001-225814%22]}

Present:
Marko Bošnjak, President, Pere Pastor Vilanova, Arnfinn Bårdsen, Faris Vehabović, Egidijus Kūris, Iulia Antoanella Motoc, Yonko Grozev, Carlo Ranzoni, Alena Poláčková, Tim Eicke, Jovan Ilievski, Jolien Schukking, Péter Paczolay,

Gilberto Felici, Lorraine Schembri Orland, Ana Maria Guerra Martins, Frédéric Krenc, JJ, and Johan Callewaert, Deputy Grand Chamber Registrar

Newspaper ordered to anonymise the details of a convicted offender on grounds of the "right to be forgotten"

The applicant was a Belgian national and publisher of Le Soir, one of Belgium's leading French-language daily newspapers. In a 1994 print edition an article in Le Soir reported, among other things, on a car accident that had caused the death of two people and injured three others. The article mentioned the full name of the driver, who was convicted in 2000. He served his sentence and was rehabilitated in 2006. In 2008, the newspaper placed on its website an electronic version of its archives (including the above-mentioned article), which were available free of charge. In 2010, the driver contacted Le Soir, requesting that the article be removed from the newspaper's electronic archives or at least anonymised. The request mentioned his profession and the fact that the article appeared among the results when his name was entered in several search engines. The newspaper's legal department refused to remove the article from the archives, and later stated that it had given notice to the managing director of Google Belgium to delist the article. Before the domestic courts and the European Court of Human Rights ("ECtHR"), the applicant stated that this had produced no response. In 2012, the driver brought proceedings against the applicant seeking an order for the anonymisation of the article concerning him. In 2013, the Court of First Instance allowed most of the driver's claims. That judgment was upheld by the Court of Appeal in 2014. The applicant subsequently appealed on points of law, but his appeal was dismissed in 2016.

Relying on Article 10 (freedom of expression) of the European Convention on Human Rights ("ECHR"), the applicant complained about the civil judgment ordering him to anonymise the archived version of the article in question on the website of Le Soir.

The ECtHR noted that the national courts had taken account in a coherent manner of the nature and seriousness of the judicial facts reported on in the article in question, the fact that the article had no topical, historical or scientific interest, and the fact that the driver was not well known. In addition, they had attached importance to the serious harm suffered by the driver as a result of the continued online availability of the article with unrestricted access, which had been apt to create a "virtual criminal record", especially in view of the length of time elapsing since the original publication of the article. Furthermore, after reviewing the measures that might be considered in order to balance the rights at stake – a review whose scope had been consistent with the procedural standards applicable in Belgium – they had held that the anonymisation of the article did not impose an excessive and impracticable burden on the applicant, while constituting the most effective means of protecting the driver's privacy. Accordingly, and regard being had to the States' margin of appreciation, the ECtHR found that the national courts had carefully balanced the rights at stake in accordance with the requirements of the ECHR, such that the interference with the right guaranteed by Article 10 of the ECHR on account of the anonymisation of the electronic version of the article on the website of the newspaper Le Soir had been limited to what was strictly necessary. It could thus, in the circumstances of the case, be regarded as necessary in a democratic society and proportionate. The ECtHR therefore saw no strong reasons to substitute its own view for that of the domestic courts and to disregard the outcome of the balancing exercise carried out by them. Accordingly, it found that there had been no violation of Article 10 of the ECHR.

SUPREME COURT OF INDIA

10. Rajnish Kumar Rai v. Union of India

https://indiankanoon.org/doc/48945243/

Present:
Aniruddha Bose and Bela M. Trivedi, JJ.

Court cannot ignore the ratio laid down in an earlier judgment merely because the same has been referred to a larger Bench

The Supreme Court upheld the ratio of an earlier judgment, despite it being referred to a larger Bench. The case involved a petitioner seeking to transfer proceedings from the Central Administrative Tribunal (CAT) in Hyderabad to its Ahmedabad Bench. However, his application was rejected by the Principal Bench of CAT, Delhi, as the hearing was at its final stage in

Hyderabad. The Gujarat High Court also rejected his plea, citing lack of territorial jurisdiction and referencing the case Union of India v. Alapan Bandyopadhyay. The Supreme Court maintained that it could not ignore the ratio of the Alapan Bandyopadhyay case until a decision from the larger Bench was made. Consequently, the Supreme Court rejected the petitioner's plea.

11. Ashish Kumar Chauhan v. Commanding Officer

https://indiankanoon.org/doc/58244430/

Present:
S. Ravindra Bhat and Dipankar Datta, JJ.

The principle of res ipsa loquitur, applicable in medical negligence cases, implies that in cases of evident negligence, the burden of proof shifts to the hospital or medical practitioners

The Appellant, an IAF radar operative, fell ill on duty and was advised to undergo a blood transfusion. Post-transfusion, he was diagnosed with HIV and traced the infection back to the transfusion. Despite his requests, the appellant was denied access to his medical records relating to the transfusion and was discharged from service without due process. The Court of Inquiry found no negligence in the transfusion process. The appellant's complaint for compensation was dismissed by the Commission, citing lack of expert opinion to establish medical negligence. Consequently, appeal was filed. The Supreme Court ruled that the appellant, who was transfused with blood under medical advice, was not informed about potential risks or consequences.

The transfusion process was marked by lapses and a lack of adherence to expected standards of care, indicating systemic failure. This resulted in the appellant being transfused with HIV positive blood, leading to his current condition. The respondents failed to prove that due care was exercised, leading to the application of res ipsa loquitur. Consequently, the respondents were held liable for the appellant's injuries and were ordered to compensate him. The liability was assigned to the respondent organizations jointly and severally, as individual liability could not be determined.

SUPREME COURT OF BANGLADESH

12. Kabir Reza v. Shah Mohammad Ashraf Islam

https://www.supremecourt.gov.bd/resources/documents/1367556_Crl_P_No_798_of_2018.pdf

Present:
Hasan Foez Siddique, C. J., **M. Enayetur Rahim** and Jahangir Hossain, JJ

A criminal complaint filed by the attorney is legal and the Magistrate can take cognizance against the accused

The complainant, represented by his attorney, filed a complaint under section 138 of the Negotiable Instruments Act, 1881, accusing the defendant of issuing dishonored cheques. Despite a legal notice, the accused failed to pay, prompting the complaint during the complainant's incarceration. The Magistrate took cognizance, leading to a trial where the accused sought discharge. The High Court dismissed the challenge, and the accused, aggrieved, filed a criminal petition for leave to appeal, arguing that the attorney lacked authority to file the complaint. The petitioner's advocate contended that only the 'payee' or 'holder in due course' could file the complaint. The Supreme Court ruled that a Power of Attorney holder can file and verify a complaint petition on behalf of the complainant provided he has specific knowledge of the transaction must be asserted in the complaint. It was concluded that filing a complaint through power of attorney is legal, and the holder can verify the complaint if they witnessed the transaction or possess knowledge of it. The court also affirmed that anyone can set the criminal law in motion by filing a complaint, and no court can decline to take cognizance solely because the complainant was not competent to file the complaint. The court found no illegality in this and took cognizance of the case against the accused. The criminal petition for leave to appeal was dismissed due to lack of merit.

13. The Government of the People's Republic of Bangladesh v. Mohammad Amir ul Islam

https://www.supremecourt.gov.bd/resources/documents/2010446_C_A_NO_14_of_2014.pdf

Present:
Hasan Foez Siddique,C.J., **M. Enayetur Rahim** and Md. Ashfaqul Islam, JJ.

Where the contract is not constitutional, statutory, or commercial, it can't be enforced through writ jurisdiction

The petitioner, who is the respondent No.1, filed a writ petition challenging his discharge from service. The petitioner contended that he was discharged without a show cause notice and violated the principle of natural justice. The petitioner was accused of helping his sister cheat. The Recruitment Committee found the petitioner responsible and discharged him from service. The High Court Division, in the impugned judgment, declared the termination of the writ-petitioner's service as void, citing a violation of natural justice and a breach of contractual terms. The government, aggrieved by the decision, filed a Civil Petition for Leave to Appeal, leading to the present appeal. The Supreme Court ruled that the principles of Natural Justice cannot be prettified or felted into rigid moulds. They are flexible and turn on the facts and circumstances of each case. The Natural Justice has an expanding content and is not stagnant. In applying these principles, there is a need to balance the competing interests of Administrative justice and the exigencies of efficient administration. In the instant case the contract between the parties is neither a constitutional contract nor a statutory or commercial contract and thus, there is no scope to enforce any terms of the contract invoking writ jurisdiction and as such the writ-petition was not maintainable.

SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

14. Attorney- General v. Poththegodage Anula Chandralatha

https://www.supremecourt.lk/images/documents/sc_appeal_21_2021.pdf

Present:
Murdu N.B. Fernando, **K.Kumudini Wickremasinghe**, and Mahinda Samayawardhena, JJ.

Evidence must not be counted but weighed and the evidence of a single solitary witness if cogent and impressive could be acted upon by a court of law

Appellants/accused persons were convicted for murder awarded with death penalty by the Court of Appeal and the sentence was maintained by the High Court, hence this appeal in the Supreme Court. The appellants questioned the numerical strength and credibility of the prosecution witnesses. The Supreme Court observed that evidence must not be counted but weighed and the evidence of a single solitary witness if cogent and impressive could be acted upon by a court of law. No particular number of witnesses shall, in any case, be required for the proof of any fact. Credibility is a question of fact and not law. The Supreme Court stressed the importance of Trial Judges' observation of the demeanor of witnesses in deciding questions of fact. Demeanor represents the Trial Judges' opportunity to observe the witness and his deportment. The court will only act on the evidence of a witness if the witness is a credible witness and the credibility is tested mainly on the demeanor or deportment of a witness after applying several tests such as probability/ improbability, spontaneity, belatedness, consistency/ inconsistency, and/or interestedness/ disinterestedness. It is apparent that the High Court and the Court of Appeal have carefully analyzed, evaluated, and weighed the evidence that was led in the trial and was convinced that the testimonies of these two witnesses in Court were cogent and truthful in nature. The appeal was dismissed.

15. K. L. I. Amarasekera v. Sri Lanka Ports Authority

https://www.supremecourt.lk/images/documents/sc_fr_52_2015.pdf

Present:
Priyantha Jayawardena, Vijith K. Malalgoda and **K.Kumudini Wickremasinghe**, JJ.

Discrimination is the essence of classification; so long as it rests on a reasonable basis there is no violation of the constitutional rights of equality

The petitioners, former Security Guards and Sergeants for the Sri Lanka Ports Authority, filed a constitutional application alleging violation of their fundamental rights to equality, equal protection of the law, and freedom of occupation. They claimed they were unfairly denied Assistant Security Officer Positions, despite assurances and established procedures. They argue that this

violated their rights under the constitution and breached the principles of natural justice, and failed to meet legitimate expectations. The court granted leave to proceed. The Supreme Court observed that the equality before the law does not mean that things which are different shall be treated as they were the same. Thus, the principle of equality enacted does not absolutely prevent the State from differentiating between persons and things. The discrimination which is prohibited is treatment in a manner prejudicial as compared to another person in similar circumstances. Discrimination is the essence of classification; so long as it rests on a reasonable basis there is no violation of the constitutional rights of equality. In order to establish discrimination, it is not necessary for the Petitioner to show that correct procedure was applied in the case of others and that he has been singled out for the adoption of a different procedure. Nor is it necessary for him to show that no others were victims of the wrong procedure now applied for the first time, perhaps in his case. In order to sustain the plea of discrimination based upon Article 12(1) a party will have to satisfy the court about two things, namely (1) that he has been treated differently from others, and (2) that he has been differently treated from persons similarly circumstanced without any reasonable basis. The Supreme Court ruled that the respondent's departure from established appointment criteria was arbitrary and violated the petitioners' fundamental rights under Article 12(1) of the Constitution. The petitions were allowed.

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