

LAHORE HIGH COURT B U L L E T I N



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FORTNIGHTLY CASE LAW BULLETIN

(01-01-2025 to 15-01-2025)

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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1. **Supreme Court of Pakistan**
Kausar Rana Resources (Private) Limited, etc. v. Qatar Lubricants
Company W.L.L. (QALCO), etc.
C.P.L.A. 4468/2024
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Irfan Saadat Khan & Mr.
Justice Aqeel Ahmed Abbasi.
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 4468 2024.pdf

Facts: The respondents filed a petition before the Lahore High Court, invoking its jurisdiction as a Company Bench under the Companies Act 2017 (“Companies Act”). The petitioners filed an application under Section 34 of the Arbitration Act 1940 (“Arbitration Act”), seeking for referring the matter to arbitration but the Company Bench dismissed the petitioners’ application. Consequently, the petitioners have filed a petition for leave to appeal.

Issues:

- i) What are the purposes of Arbitration and how it is vital for our country and our judicial system?
- ii) Whether right to arbitrate cannot be enforced by a person who is not a party to the agreement?
- iii) Whether the award is to be filed in Civil Court or the Company Bench of the High Court?
- iv) What is difference between civil courts of general jurisdiction and civil courts of special jurisdiction, whether a court established under the Companies Act qualifies as a Civil Court?
- v) What does term “pro-arbitration bias” reflects?

Analysis:

- i) By prioritizing arbitration, courts uphold the principle of party autonomy and reinforce the parties’ choice to resolve their disputes outside traditional litigation. This approach not only respects their agreement but also addresses the inefficiencies inherent in conventional judicial proceedings. Courts should adopt a resolute stance of non- interference, encouraging arbitration and other forms of alternative dispute resolution (ADR), such as mediation, as the preferred modes of resolving disputes. This judicial mindset is particularly vital for our country, where an overburdened judicial system and burgeoning case backlogs impose immense economic costs on both the judiciary and society. By respecting arbitration agreements and fostering an environment conducive to swift dispute resolution, courts can play a pivotal role in alleviating this crisis. Courts in Pakistan must therefore embrace this ethos, recognizing that promoting arbitration is not merely a legal necessity but also an economic and commercial imperative for ensuring the country’s progress and prosperity.
- ii) Clause (1) of the agreement explicitly provides that “QALCO shall relinquish all its rights in KRR and transfer all of its existing shares in Kausar Rana Resources (Pvt.) Ltd. [KRR], including shares of nominee director, to Mr. Atif Naeem Rana – CEO or a nominee of the same”. Pursuant to this clause, the shares were transferred to the petitioner Sameen Naeem Rana, who acted as the nominee of the petitioner Atif Naeem Rana — a party and signatory to the agreement containing the arbitration clause. Thus, Sameen Naeem Rana derives his rights

and title in the transferred shares under and through Atif Naeem Rana. Accordingly, he is subject to all rights and obligations arising from the agreement signed by Atif Naeem Rana, including the right to enforce the arbitration clause contained therein.

iii) As per Section 14(2) of the Arbitration Act,⁴ the award made by an arbitrator is to be filed in Court and the “Court”, as defined in Section 2(c) of the Arbitration Act, means a Civil Court having jurisdiction to decide the question forming the subject-matter of the reference [to arbitration] if the same had been the subject-matter of a suit. The question of law before us, therefore, is: Whether the Court, i.e., a Company Bench of the High Court, established by the Companies Act qualifies as a Civil Court having jurisdiction to decide the question forming the subject matter of the reference to arbitration if the same had been the subject matter of a suit. Generally, a civil court is a court that has jurisdiction to adjudicate disputes between individuals or entities concerning their civil rights and obligations.--- Accordingly, the Civil Courts established under the Civil Courts Ordinance 1962 are referred to as general courts of civil jurisdiction or general civil courts, as they have been conferred jurisdiction under Section 9 of the Code of Civil Procedure 1908 to try all suits of a civil nature except those whose cognizance is expressly or impliedly barred. Conversely, courts such as Banking Courts, Consumer Courts and Labour Courts, etc., established under different statutes and conferred jurisdiction by those statutes to deal with specific matters, are referred to as civil courts of special jurisdiction or special civil courts.--- The dispute in the present case, as well as the subject matter of the reference to arbitration, pertains to the alleged fraudulent transfer of shares and the rectification of the register of members (shareholders),¹⁵ which falls exclusively within the jurisdiction of the Court established under the Companies Act.¹⁶ Accordingly, we accept the request of learned counsel for the parties and direct that the Award made by the Arbitrator be filed before the Company Bench for further proceedings in accordance with the Arbitration Act.

iv) The latter view also aligns with the provisions of Section 20 of the Arbitration Act, which permits an application to file an arbitration agreement in a court having jurisdiction over the matter to which the arbitration agreement relates. Such a court may either be a civil court of general jurisdiction or a civil court with special jurisdiction over the relevant matter. It is quite common that the legislature, from time to time, carves out specific matters from the general jurisdiction of Civil Courts established under the Civil Courts Ordinance 1962, either to ensure their expeditious resolution or to address the need for specialized expertise. Jurisdiction over such matters is conferred upon Special Courts established for this purpose. However, the fact that these matters are adjudicated by special civil courts established under special laws, rather than by general civil courts established under the general law, does not alter their classification as civil matters nor does it change the nature of the civil rights or obligations involved.--- If the term “Civil Court” in Section 2(c) of the Arbitration Act were interpreted to refer exclusively to civil courts of general jurisdiction, all civil matters

adjudicable by special courts under specific laws would fall outside the scope of the Arbitration Act. Such an interpretation would preclude applications for filing award or arbitration agreements in courts having special jurisdiction over the relevant matters, thereby frustrating the legislative intent and purpose of the Arbitration Act, which is to provide an alternative dispute resolution mechanism in civil matters. Section 2(c) of the Arbitration Act excludes from the definition of “Court” only one civil court of special jurisdiction, namely, the Small Cause Court, and no other civil court. Courts exercising civil jurisdiction in relation to specific matters, such as the Court established under the Companies Act, cannot be read into the exception clause of Section 2(c) of the Arbitration Act. Therefore, it is our considered view that the term “Civil Court” mentioned in Section 2(c) of the Arbitration Act does not refer exclusively to civil courts of general jurisdiction but also encompasses civil courts of special jurisdiction.

v) This conclusion aligns with the pro-arbitration bias firmly established in the enforcement of international arbitral awards, which, in our considered view, is equally applicable to domestic disputes. Where parties agree to take their disputes to arbitration, they expect the court to hold them to their bargain. It is underlined that the word “bias” used in the work “pro-arbitration bias” is not used in the negative or prejudicial sense. Instead, it reflects a judicial and a policy inclination towards supporting arbitration as a preferred method for resolving disputes. This tendency arises from recognizing arbitration’s benefits, such as efficiency, flexibility and the ability to deliver tailored outcomes. Applying this pro-arbitration bias to domestic arbitration advances the overarching objectives of arbitration law, including efficiency, party autonomy and minimising judicial interference. Requiring a party to an arbitration agreement to first approach a civil court of general jurisdiction for enforcement of the arbitration agreement and then, if the arbitral proceedings fail, to revert to a civil court of special jurisdiction, introduces unnecessary delay, inconvenience and expense. Such a convoluted process undermines the purpose of arbitration as an expeditious and cost-effective mechanism for dispute resolution. Adopting a pro-arbitration bias in domestic disputes is also essential to addressing the challenges posed by the overwhelming backlog of cases in our judicial system, particularly at the level of courts of original jurisdiction (trial courts).

Conclusion:

- i) See above analysis No. i
- ii) A right to arbitrate can be enforced by a person who is not a party to the agreement but he/she derives the rights and title from the agreement.
- iii) The award is to be filed in Company Bench of the High Court.
- iv) See above analysis No. iv
- v) See above analysis No. v

- 2. Supreme Court of Pakistan**
Noor Muhammad etc. v. The State
Jail Petition Nos.603/2017, 442/2019, 443/2019 & 444/2019
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Athar Minallah, Mr. Justice Malik Shahzad Ahmad Khan.
https://www.supremecourt.gov.pk/downloads_judgements/j.p. 603 2017.pdf

Facts: Petitioner was tried in three separate FIRs. On conclusion of each trial, he was convicted and sentenced to imprisonments for several terms including life imprisonment. Feeling aggrieved, he filed appeals before High Court, which were dismissed by means of the impugned judgments, hence, these petitions for leave to appeal.

Issues: i) Whether sentences awarded to a convict can be directed to have run concurrently?
 ii) In whose favor Courts are required to exercise discretion?

Analysis: i) Under Section 397 Cr.P.C., the Court has power to direct that the sentences awarded to the petitioner in the other FIRs shall run concurrently. In Mst. Shahista Bibi, this Court has held that the sentences of imprisonment or that of life imprisonment awarded at the same trial or in two different trials have to run concurrently.
 ii) It is always expected that the Courts are required to exercise its discretion in favour of accused, especially in the cases of minors, unless the circumstances demand otherwise.

Conclusion: i) Court has power to direct that sentences awarded to a convict to have run concurrently.
 ii) Courts are required to exercise discretion in favour of accused.

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- 3. Supreme Court of Pakistan**
Mst. Anita Anam v. General Public and another
Civil Petition No. 256-Q of 2020
Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 256 q 2020.pdf

Facts: The facts of the case are that petitioner being unmarried eldest daughter of a deceased Government officer prayed for her share in the family pension. The petitioner challenged the dismissal of her application for lower fora, asserting her entitlement as per amended rules.

Issues: i) What is the purpose of the summary procedure under section 373 of the Succession Act,1925?
 ii) Does the issuance of a succession certificate under the Succession Act,1925 constitute a final and conclusive determination of rights?
 iii) When can a Court refuse to grant a succession certificate?
 iv) Can successive applications for a succession certificate be filed under the

Succession Act, 1925?.

- v) Whether the provisions of the code of Civil Procedure 1908 apply to matters governed by the Succession Act, 1925?
- vi) Does the eldest unmarried daughter of a deceased Government Officer have a right to draw family pension under the amended Blochistan civil services pension rules, 1999?

Analysis:

i) Section 373 of the Act provides a simplified procedure for the Trial Court to be followed, while granting or refusing to grant a certificate. The procedure is summary in nature, only to determine a prima facie entitlement of an applicant, to receive the property of a deceased and to distribute the same amongst all those, who are legally entitled to receive their respective share. The object of summary trial provided by the Act, is to shorten the course of trial in order to ensure that justice is delivered swiftly, so as to facilitate an applicant, in order to get a certificate at the earliest, without compromising on the principles of natural justice and fair trial.

(ii) The certificate is granted for a limited purpose and for a limited sphere, therefore, it is not a final and conclusive decision between the parties or those who are entitled to get their share from the left-over property of a deceased. The court is bound to decide the application by adopting a procedure provided by section 323 of the Act while granting a certificate to an applicant, provided he makes out a prima facie title to the subject matter of the certificate.

(iii) Where the Court considers that a question of title is involved which cannot be disposed summarily, on the basis of available material, it may refuse to grant a certificate and allow the parties to establish their right by filing a regular suit before a competent court of law.

(iv) A Judge is empowered to issue more than one certificates, as provided by sub-section (3) of section 372 and sub-sections (3) and (4) of section 373 of the Act. The Act place no limitation upon the right of the parties in filing more than one application, therefore, any decision made under Part-X upon any question of right between the parties, shall not bar the trial of the same or related question in any subsequent proceedings under this Act or in any suit or other proceedings between the same parties. The Act does not restrict a person from filing application in respect of a portion of claim which he omits while filing earlier application.

(v) What is to be underlined is that the provisions of CPC cannot be applied to the matters falling under the Act, in view of the fact that being a special law, a specific procedure is provided, therefore, the provisions of Order II, Rule 2 CPC do not attract in the matters under the Act. However, where the Act is silent on matters relating to procedure for the trial of the case, the procedure provided by the CPC may be adopted to regulate the proceedings.

(vi) After amendment in the Rules in the year 1999, an eldest unmarried daughter of a deceased Govt. Officer is made entitled to draw her share in a monthly family pension, till her marriage. The Rules further provide that, in case, the eldest

daughter marries or dies, the next eldest unmarried daughter of the deceased will become entitled to draw her share out of the family pension, till her marriage.

- Conclusion:**
- i) The object of summary trial provided by the Act, is to shorten the course of trial in order to ensure that justice is delivered swiftly, so as to facilitate an applicant.
 - ii) It is not a final and conclusive decision between the parties or those who are entitled to get their share from the left-over property of a deceased.
 - iii) Where the Court considers that a question of title is involved which cannot be disposed summarily, it may refuse to grant a certificate.
 - iv) See Analysis No.(iv).
 - v) Provisions of CPC cannot be applied to the matters falling under the Act.
 - vi) An eldest unmarried daughter of a deceased Govt. Officer is made entitled to draw her share in a monthly family pension, till her marriage.

4. Supreme Court of Pakistan
Secretary to Government of the Punjab Law & Parliamentary Affairs
Department, Lahore and another v. Ali Ahmad Khan
Civil Petition No.2330-L of 2019
Mr. Justice Amin-ud-Din Khan Mr. Justice Muhammad Ali Mazhar Mr.
Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 2330_1_2019.pdf

Facts: Disciplinary proceedings were initiated against a civil servant for willful absence, unauthorized foreign travel, and submission of a fabricated medical certificate. The department-imposed penalty of reduction to a lower post, from Deputy District Attorney (BS-18) to Assistant District Attorney (BS-17), for a period of four years. This penalty was overturned by the Service Tribunal on appeal, which was challenged in the Supreme Court.

Issues:

- i) Does the regularization of absence as extraordinary leave without pay nullify the misconduct charges and penalty imposed?
- ii) Was the tribunal justified in deciding the matter without addressing the merits of the case?
- iii) What is the standard for proving misconduct in departmental inquiries under service laws?
- iv) What is the scope of a Service Tribunal's authority in altering penalties imposed by the competent authority?

Analysis:

- i) If the act of willful absence or leave without sanction or travelling without the approval of ex-Pakistan leave is treated lightly, it will become a hobby for willful absentees rather than an act of misconduct. Thus, merely treating the period of absence without pay in cases where punishments are imposed by the competent authority other than dismissal/removal from service neither exonerate the respondent from the charge of misconduct nor the act of misconduct is vanished on this count alone.
- ii) No doubt, a lawsuit is bound to collapse when there is no rational basis on

which the claim could succeed. A case deems to have been decided on the merits when the decision or order is founded on fundamental issues, with due consideration of the defence, and the probability and preponderance of evidence, both oral and documentary... We are at loss to understand how the learned Tribunal decided the matter without touching upon the merits of the case and why it did not, after considering the merits, decide the appeal, which was its prime duty under the law.

iii) In service appeals challenging minor or major penalties imposed upon the civil servants, the core issue is to evaluate the gravity of charges and the proof of the guilt of the delinquent during the inquiry, but without adverting to the inquiry proceedings and report, it would not be possible for the learned Tribunal to reach a just and proper conclusion.

iv) A meticulous and assiduous reading of the Service Tribunal Acts, both Federal and Provincial, unequivocally shows that the Service Tribunal is empowered to confirm, set aside, vary, or modify the order appealed against, and for the purpose of deciding any appeal, it is also deemed to be a Civil Court with the same powers as those vested in the Code of Civil Procedure, 1908. However, the award of appropriate punishment under the law is primarily the function of the concerned administrative authority and the role of the Tribunal/Court is secondary.

- Conclusion:**
- i) The regularization of absence does not nullify the misconduct charges or penalty imposed.
 - ii) The tribunal was not justified in deciding the matter without addressing the merits of the case.
 - iii) The tribunal must evaluate the inquiry proceedings and report to reach a just and proper conclusion in service appeals.
 - iv) The primary function of awarding punishment lies with the administrative authority, while the tribunal's role is secondary.

5. Supreme Court of Pakistan
Gul Zarif Khan and others v. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others.
Civil Petitions No.1925 to 2006 of 2024
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1925_2024.pdf

Facts: The petitioners, working under the provincial Special Education Department, claimed Health Allowance parity with devolved employees, transferred under the 18th Amendment. Despite the allowance being reinstated for devolved employees through judicial directives and subsequent notification, the petitioners appeals for similar benefits were dismissed by the Service Tribunal.

- Issues:**
- i) What was the purpose of enacting the Health Personnel Scheme Ordinance, 2011?
 - ii) What is the definition of "health personnel" under Section 2(b) of the Health Personnel Scheme Ordinance, 2011 and who is excluded from such definition?

- iii) What is the objective of the Health Personnel Scheme as outlined in Section 4 of the Ordinance?
- iv) What were the legal consequences of stopping the payment of Health Allowance to health service institutions?
- v) What conditions must be met for classification of persons to satisfy the standards of intelligible differentia and fairness?
- vi) What are the limits and grounds for judicial review of decisions or actions taken by a public body?

Analysis:

- i) Health Personnel Scheme Ordinance, 2011 (“Ordinance”), was enacted to regulate the appointment to and the terms and conditions of the services of health personnel and was made applicable to all health personnel, serving in the Federal health institutions and related organizations under the Federal Government of Pakistan.
- ii) According to Section 2 (Definitions Clause) (b) of the Ordinance, “health personnel” means a person who holds a post in any institute or organization delivering services in the health sector and is included in Schedule-I, but does not include (i) a person who is on deputation to the Federal Government from any Province or other authority; (ii) a person who is employed on contract, or on work-charged basis or who is paid from contingencies.
- iii) Section 4 of the Ordinance delineates the objective of the Scheme according to which career growth of health professionals has been linked with enhancement in professional education and skills through trainings, continuing education, higher qualifications, professional experience, research papers and performance, as per prescribed criteria, laid down by the relevant regulatory bodies from time to time, where applicable.
- iv) The Prime Minister of Pakistan had approved the payment of Health Allowance to the institutions providing Health Services equal to one basic pay of salary. However, when this payment was stopped for certain reasons, litigation ensued, which was ultimately resolved vide judgment dated 17.01.2018 passed by the Supreme Court of Pakistan in the case of Federation of Pakistan through Secretary Capital Administration and Development Division, Islamabad and others Vs. Nusrat Tahir and others (2018 PLC (CS) 669).
- v) Persons may be classified into groups and such groups may be treated differently if there is a reasonable basis for such difference. At the same time, the principle of equality does not imply or connote that every law must have universal application to all class of persons. In fact, the oscillating or wavering needs of dissimilar sets of persons, which may have little in common, can be treated differently on logical perspicacity. However, for such classification to meet the standards of fairness, the self-actualization of two vital constituents must be fulfilled. First, the classification must be founded on an intelligible differentia which may judiciously distinguish persons or things that are grouped together from others left out of the group, and second, the differentia must have a logical and sensible nexus with the object sought to be achieved.

vi) Under the sphere of judicial review, the Court may review the lawfulness of a decision or action made by a public body. The Court may invalidate laws, acts, and governmental actions that are incompatible with a higher authority. Though the power of judicial review of a governmental policy is now well-settled, in which neither the court can act or represent as an appellate authority with the aim of scrutinizing the rightness or aptness of a policy nor may it act as an advisor to the executives on matters of policy which they are entitled to formulate, but this can be sought when a decision-maker fails to observe statutory procedures, misdirects itself in law, exercises a power wrongly, improperly purports to exercise a power that it does not have, or the policy decision was so unreasonable that no reasonable authority could ever have come to it.

- Conclusion:**
- i) Health Personnel Scheme Ordinance, 2011 (“Ordinance”), was enacted to regulate the appointment to and the terms and conditions of the services of health personnel.
 - ii) See above analysis No ii.
 - iii) See above analysis No iii.
 - iv) The matter was resolved vide judgment reported as 2018 PLC (CS) 669.
 - v) See above analysis No v.
 - vi) See above analysis No vi.

6. Supreme Court of Pakistan
Sui Northern Gas Pipelines Ltd (SNGPL), Islamabad v. Ms S.K. Pvt. Limited and others Etc.
Civil Petitions No. 3589, 3590 & 3602/2022
Mr. Justice Muhammad Ali Mazhar & Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 3589_2022.pdf

Facts: The respondents, being the consumer of SNGPL, filed suits before the Gas Utility Court alleging the bills issued to them were in sheer violation of the contract for supply of gas. Trial court rejected the plaint under Order VII Rule 11 of CPC observing that an alternate remedy is available to them. The appeals of respondents were allowed by the High Court, and matter was remanded to trial court to decide the suits on merits. Hence, two Civil Petitions for leave to appeal filed before the Hon’ble Supreme Court of Pakistan.

Issues:

- i) Whether under the Gas (Theft, Control & Recovery) Act, 2016 (“2016 Act”) only the Gas Utility Companies can seek remedy for resolving the disputes regarding billing or metering?
- ii) What kind of issues exclusively fall within the jurisdiction of the Gas Utility Court?
- iii) Whether a provision in any law can be controlled, restricted or limited by a preamble?
- iv) Whether the preamble can be relied upon solely to override the express provisions of the law without considering its pith and substance?

- v) Whether Section 6 of “2016 Act” debars the consumer from directly invoking the jurisdiction of the Gas Utility Court?
- vi) When two interpretations are plausible or achievable, which interpretation is to be preferred by the court?

Analysis:

- i) It is clear beyond any shadow of doubt that Section 6 of the 2016 Act provides both Gas Utility Companies and consumers with an equitable and expeditious remedy for filing a complaint or suit, as the case may be, for resolving disputes regarding billing or metering.
- ii) Learned High Court, after a comprehensive discussion, rightly held that issues of overbilling, including overcharging of Gas Calorific Value (GCV), penalties, and estimated bills due to meter stoppage, fall within the scope of Section 6 of the 2016 Act. Therefore, the lawsuit was within the exclusive jurisdiction of the Gas Utility Court.
- iii) A straightforward and uncomplicated provision in any law cannot be controlled, restrained, or limited by a narrow preamble.
- iv) The preamble cannot be relied upon solely to expurgate or override the express provisions of the law without considering its pith and substance.
- v) Section 6 of the 2016 Act neither imposes such an embargo nor debars the consumer from directly invoking the jurisdiction of the Gas Utility Court.
- vi) Whenever two interpretations are plausible or achievable, the Court ought to prefer the interpretation that expands the remedy and represses the mischief.

Conclusion:

- i) No. The remedy for filing a complaint or suit is available for both Gas Utility Companies and consumers.
- ii) See above analysis No.ii.
- iii) No. It cannot be controlled.
- iv) See above analysis No.iv.
- v) No. It does not bar.
- vi) See above analysis No.vi

7.**Supreme Court of Pakistan****Ghous Baksh v. The State****Criminal Appeal No. 294 of 2020**

Mr. Justice Jamal Khan Mandokhail, Ms. Justice Musarrat Hilali, Mr. Justice Malik Shahzad Ahmad Khan

https://www.supremecourt.gov.pk/downloads_judgements/crl.a. 294 2020.pdf

Facts:

The appellant was tried by trial court on the charge of committing murders and was convicted under Section 302(b) PPC. He preferred appeal, High Court upheld the conviction and sentence awarded by the Trial Court. Hence, this appeal. petition.

Issues:

- i) Whether mere retraction of an earlier statement by a witness automatically render him/her hostile?
- ii) Whether Hostility and Retraction are two different concepts?

- iii) Can conviction be sustained when report is obtained on sending the crime empties together with the weapon of offence?
- iv) What is the legal principle/rule with regard to chain of circumstantial evidence not proved?

- Analysis:**
- i) It is well-established that mere retraction of an earlier statement by a witness does not automatically render him/her hostile.
 - ii) Hostility and Retraction are two different concepts. Hostility, in legal terms, refers to a deliberate intent to deviate from the truth or act against the interests of the party calling the witness whereas 'Retraction' refers to the act of withdrawing or taking back a statement, testimony, or accusation^ often due to its inaccuracy, falsity, or unreliability.
 - iii) In the case titled Sarfraz and another v. The State (2023 SCMR 670) wherein it was held that "sending the crime empties together with the weapon of offence is not a safe way to sustain conviction of the accused and it smacks of foul play on the part of the Investigating Officer simply for the reason that till recovery of weapon, he kept the empties with him for no justifiable reason".
 - iv) It is a well-established principle that circumstantial evidence must form a complete chain. excluding every hypothesis other than the guilt of the accused.

- Conclusion:**
- i) Mere retraction of an earlier statement by a witness does not automatically render him/ her hostile.
 - ii) See above analysis No.ii
 - iii) Conviction cannot be sustained when report is obtained on sending the crime empties together with weapon.
 - iv) See above analysis No. vi

8. Supreme Court of Pakistan.
Ali Madad Jattak v. Mir Muhammad Usman Pirani and others
Civil Appeal NO.1349 OF 2024
Mr. Justice Shahid Waheed, Mr. Justice Irfan Saadat Khan, Mr. Justice Aqeel Ahmed Abbasi
https://www.supremecourt.gov.pk/downloads_judgements/c.a. 1349 2024.pdf

Facts: The appellant preferred this appeal against the judgment of the learned Election Tribunal Balochistan, whereby, the petition filed by the Respondent No.1 is allowed and notification declaring the appellant as Returned Candidate is set aside.

- Issues:**
- i) What are the requirements of filing Election Petition under section 139/142 of the Election Act, 2017?
 - ii) What are the powers and procedure to be adopted by the Election Tribunals?
 - iii) Whether the adherence to procedure provided under CPC as well as under the QSO could be relaxed?
 - iv) Whether compliance of legal procedure of 'Formal Exhibition' is absolute?

v) Whether absence of formal exhibit marking upon a document makes it irrelevant?

- Analysis:**
- i) Within the prescribed time alongwith requisite receipt of amount paid as security for the costs of the petition...Perusal of the memo of petition further reveals that specific allegations and detail of rigging of election, manipulation and tampering in Form45 have been made by the Respondent No.1 while filing the subject election petition before the Election Tribunal, in the memo of petition which is duly verified on Oath before the Oath Commissioner whereas, all the evidence and documents including duly sworn affidavits of Respondent No.1 alongwith fourteen (14) witnesses were also attached, whereas, list of witnesses and list of documents was also provided.
 - ii) The Election Act, 2017, empowers Election Tribunals with the same powers as of a civil court under the Civil Procedure Code (CPC). Sections 139-144 of the Act specifically deal with the Tribunal's powers regarding taking of evidence, the manner in which the proceedings are to be conducted by the Election Tribunal and the necessity of compliance with the procedural norms.
 - iii) The Election Tribunal, while exercising the powers of a Civil Court, has to adopt the procedure as provided under CPC as well as under the Qanun-e-Shahadat Order, 1984 when recording evidence, however, in appropriate cases, stricto sensu adherence or compliance can be relaxed, provided the purpose is served, and fair opportunity is provided to the parties to the litigation while confronting with the material and the documents being relied upon by either party. The Qanun-e-Shahadat Order governs the admissibility of evidence in Pakistan.
 - iv) It may be observed that in case of substantial compliance of legal procedure, the formal exhibition requirement is not absolute and can be relaxed under certain circumstances, particularly, in election matter pending before the Election Tribunal, which can adopt any course of action to regulate its proceeding instead of following the technicalities of CPC, except such provisions specifically made applicable for limited purposes.
 - v) When the question of admissibility of document arises in a court, the court focuses solely on the relevance of the document and if it has met the legal requirements laid down in Qanun-e-Shahadat Order or it follows the evidentiary law of Pakistan. The formal exhibition of a document solely doesn't guarantee its proof or admissibility. Similarly, the absence of a formal exhibit marking doesn't necessarily mean that the document cannot be considered as evidence, provided other evidentiary requirements are met.

- Conclusion:**
- i) Election petition u/s 139/142 of the Election Act, 2017 must be within prescribed time, receipt of amount paid as security for costs of petition must be accompanied. It should also contain specific allegations and details of rigging, verification on oath before the Oath Commissioner and affidavits of witnesses' alongwith list of witnesses and documents attached.

- ii) Election Tribunals are invested with the same powers as of a civil court under the CPC.
- iii) See above analysis (iii).
- iv) The compliance of legal procedure of 'Formal Exhibition' is not absolute and can be relaxed under certain circumstances.
- v) The absence of a formal exhibit marking doesn't necessarily mean that the document cannot be considered as evidence.

9. Supreme Court of Pakistan
Abdul khaliq v. The state
Jail Petition No.441 of 2019
Mr. Justice Sardar Tariq Masood, Mr. justice Mazhar Alam Khan Miankhel
https://www.supremecourt.gov.pk/downloads_judgements/j.p. 441 2019.pdf

Facts: Petitioner was convicted by Additional District Magistrate / Assistant Political Agent under section 121-A of the PPC and Regulation 11/40 of the FCR. The petitioner being aggrieved assailed his conviction through writ petition before High Court which was disposed of with permission to file appeal. Petitioner filed appeal under section 408 of Cr.P.C. which got dismissed. Hence, leave to appeal before Supreme Court of Pakistan.

Issues:

- i). Whether constitutional jurisdiction of High Court can be invoked against conviction under Regulation 11/40 of the FCR without availing remedies provided under the statute?
- ii) Can High Court assume appellate jurisdiction when right of appeal is not provided by the statute?
- iii) Whether High Courts and Supreme Court of Pakistan have jurisdiction to examine orders passed by authorities, under FCR, prior to omission of Article 247 of the Constitution?

Analysis: i) It is by now well settled that where a particular statute/law provides a self-contained mechanism and well defined forum of redressal for the determination of questions of law or facts by way of an appeal or revision to another authority or Tribunal as the case may be, the same has to be followed being the remedy provided under the law. The petitioner without exhausting such remedies cannot be allowed to invoke the constitutional jurisdiction of the High Court. Furthermore, the writ jurisdiction of the High Court cannot be exploited as the sole solution when there are equally effective and adequate alternate remedies provided under the law, these cannot be bypassed to invoke the writ jurisdiction. Even otherwise, the extraordinary jurisdiction of the High Court under Article 199 of the Constitution cannot be reduced to an ordinary jurisdiction of the High Court...It is, however, true that in certain cases, resort to the Constitutional jurisdiction of the High Court instead of availing the remedy provided under the statute may be justified, but no such material is available on record of this case for ignoring the remedy provided under the FCR.

ii) The right of appeal has always been held to be a statutory right. The judgment in Reference No.1-P/2019, as argued, is not before us nor, it has been argued and established that the law point involved in the Reference was similar to the one involved in this case. When the law has not provided any right of appeal before the High Court then the High Court itself cannot assume the said jurisdiction. If such a jurisdiction is exercised, then that would be nothing but nullity in the eye of law and coram non iudice. Hence, no basis for interfering with the impugned judgment of the High Court arises.

iii) Coming to the other important plea of the petitioner that this Court as well as the High Court now has the jurisdiction to examine the vires or legality of the order passed by the authorities under the FCR on the grounds that Article 247, which bars their jurisdiction, had been omitted through the Constitution (Twenty-fifth Amendment) Act, 2018 (the Constitution Amendment). This stance of the petitioner is not legally tenable. This is because the order against the petitioner was passed by the FATA Tribunal on 05.04.2017, whereas the Amendment Act received the assent of the President on 31.05.2018 and was published in the Gazette of Pakistan on 05.06.2018, approximately more than a year after the order dated 24.08.2017 of the Additional District Magistrate/Assistant Political Agent, Central Kurram, Sadda. A retrospective effect cannot be given to this Constitutional Amendment, nor was there any such intention by the legislature. Otherwise, matters decided prior to this Constitutional Amendment would also need to be reviewed by the Constitutional Courts, which would open floodgate to any case, at the time when the order against the petitioner was made. The Article 247 was very much in the field and the jurisdiction of the High Court was barred in matters exclusively dealt with by the FATA hierarchy, which had attained finality and were correctly upheld by the High Court in the impugned judgment.

- Conclusion:**
- i) See above analysis (i)
 - ii) High Court itself cannot assume appellate jurisdiction when not provided by statute.
 - iii) Orders passed by FATA hierarchy, prior to omission of Article 247 of the Constitution, have attained finality and cannot be reviewed by constitutional courts.

10. Supreme Court of Pakistan
Usman Ghani @ Ghani Mula Sangeen v. The State.
Jail Petition No. 375 of 2019
Mr. Justice Sardar Tariq Masood, Mr. Justice Mazhar Alam Khan Miankhel
https://www.supremecourt.gov.pk/downloads_judgements/j.p. 375_2019.pdf

Facts: The petitioner, convicted and sentenced under the Frontier Crimes Regulations (FCR) for involvement in anti-state activities. The petitioner exhausted all remedies provided under the FCR framework up to the FATA Tribunal. The High Court dismissed the subsequent writ petition under Article 199, leading to the instant jail petition before the Supreme Court.

Issues: i) Does Article 247(7) of the Constitution bar the jurisdiction of the High Court or Supreme Court over disputes arising from tribal areas?
ii) Under what circumstances can the jurisdiction of the High Court or Supreme Court be invoked despite the bar under Article 247(7) of the Constitution?

Analysis: i) The combined effect of the above provisions of the Constitution is that in relation to the matters through Tribal Areas, the jurisdiction of both the High Court and this Court is excluded, regardless of the fact that, whether the grievance brought before this Court pertains to violation of the fundamental rights or any other law. The bar of jurisdiction of this Court in terms of Article 247(7) of the Constitution will be applicable where cause of action and subject matter of dispute is in the Tribal Area and the parties to the dispute are also residents of the Tribal Area.
ii) From the above law, as laid down by this Court, the following inter alia, are circumstances under which the jurisdiction of this Court and that of the High Court will not be barred under Article 247(7) of the Constitution rather the same will be available to be exercised under Article 184 and Article 199 of the Constitution.
(i) Where the location of the corpus in dispute is situated in the territory outside the Tribal Area;
(ii) Where the parties to the dispute have their residence outside the Tribal Area;
(iii) Where the cause of action has arisen outside the Tribal Area;
(iv) Where the offence has taken place outside the Tribal Area;
(v) Where the arrest is made or sought to be made outside the Tribal Area;
(vi) Where effective action or step is taken or performed outside the Tribal Area"

Conclusion: i) The jurisdiction of both the High Court and this Court is excluded in relation to matters through Tribal Areas, regardless of the nature of the grievance, under Article 247(7) of the Constitution
ii) The jurisdiction of Supreme Court and that of the High Court will not be barred under Article 247(7) of the Constitution where the dispute or its elements arise outside the Tribal Areas, as outlined in the enumerated exceptions.

11. Lahore High Court Lahore
Muhammad Rizwan Ahmed alias Bablo v. The State
Criminal Appeal No. 631 of 2022
Mr. Justice Syed Shahbaz Ali Rizvi, Mr. Justice Anwaarul Haq Pannun
<https://sys.lhc.gov.pk/appjudgments/2024LHC6145.pdf>

Facts: By way of filing criminal appeal, appellant challenged the judgment passed by the learned Additional Sessions Judge in connection with case FIR registered for offence under Section 9(c) of Control of Narcotic Substances Act, (CNSA) 1997, whereby he was convicted under Section 9(c) of the Act *ibid*.

Issue: i) Whether a conviction under section 9(c) of CNSA, 1997 can be sustained if the

- charge fails to specify the kind and quantity of the alleged recovered narcotic?
- ii) What would be the impact of failure to medically examine the accused or gather evidence to substantiate the allegations made in the FIR regarding the use of narcotics and its selling/ buying?
 - iii) Whether the proper protocols should be followed in the chain of custody and documentation of the recovered narcotics?
 - iv) What level of scrutiny is required in evaluating evidence in cases carrying harsh sentences under CNSA, 1997?
 - v) What standard of proof must be met by the prosecution, and how does the principle of benefit of doubt apply?

Analysis:

- i) The Control of Narcotic Substances Act, 1997, is a special law that per the kind and quantity of narcotic provides the quantum of sentence separately. Hence, this law requires that the charge must carry specific kind and quantity of narcotic recovered and if it is bereft of the same, conviction and sentence of the accused against the quantity given by the witnesses in their statements would not be justified at all.
- ii) The appellant as per contents of the crime report disclosed that he uses ‘charas’ and also supplies the same to the big dealers in different districts of the Punjab but surprisingly neither the appellant was got medico legally examined nor his blood test was got conducted. It is also relevant to mention here that no intended buyer at the place of recovery, the appellant allegedly was waiting for, could be arrested and even it was not attempted by the complainant and no disclosure regarding dealers in other districts of the Punjab could be obtained from the appellant during his physical custody. It is also to be noticed that without further investigation, the Investigation Officer got him sent to the judicial custody on 26.08.2021 i.e. very next day of his arrest. He even did not bother to know about and to associate the dealer to whom the appellant had already supplied the contraband against the “Wattak” amount of Rs.120,000/- recovered from him during body search.
- iii) It has straightaway been observed that the case against the appellant as alleged in the charge is that he was nabbed by the raiding party headed by the complainant when sitting in a car in possession of 94-packets of ‘charas’ besides “Wattak” amount of Rs.120,000/- but weight of the contraband even separation of narcotic for samples, their weight or preparation of parcels thereof and details of the car are not mentioned therein.(...) complainant (PW.4) as well as the recovery witness Muhammad Irfan Nazir, SI (PW.6) during cross examination concedes that complainant (PW.4) Rehan Nadeem, ASI convened a press conference at the police station on the day of recovery wherein none from the police party who captured the contraband and the accused/appellant except the complainant was visible in the photograph of press conference. In the said picture admittedly parcels of contraband are visible lying on the table in large number. The recovery witnesses in this regard are discrepant as according to PW.4 & PW.6 press conference took place at police station on 25.08.2021 but PW.5 denies the press conference on 25.08.2021. He and PW.6 however, stated that

immediately on return to the police station, the Investigation Officer (PW.7) deposited the case property with the Moharrar Muhammad Sadique (PW.3) and it was placed in 'Malkhana' thereafter. How and when the complainant received back the case property in absence of other members of the raiding party and how and when he deposited the same back to 'Malkhana' is a fact that has not been explained by any of the witnesses as the prosecution case is silent in this regard. The Investigation Officer (PW.7) during his cross examination has categorically stated that he never returned the parcels to the complainant after receiving the same from him. He also stated voluntarily that soon after bringing the parcels of contraband he got them deposited in Malkhana of Police Station and never produced before the DPO or any court.

iv) Harsh sentences carried by the relevant penal provisions of Control of Narcotic Substances Act, 1997, require strict scrutiny of evidence produced against the accused

v) It is hardly necessary to reiterate that the prosecution is obliged to prove its case against the accused beyond any reasonable doubt and if it fails to do so the accused is entitled to the benefit of doubt as of right. It is also firmly settled that if there is an element of doubt as to the guilt of the accused the benefit of that doubt must be extended to him.(...) utmost care should be taken by the Court in convicting an accused.

- Conclusion:**
- i) Charges must specify narcotics' type and quantity; otherwise conviction is invalid.
 - ii) See above analysis No.ii.
 - iii) Procedural lapses and conflicting witness accounts cast doubt on the case.
 - iv) Severe penalties require strict evidence scrutiny.
 - v) Doubt entitles the accused to acquittal as a right.

12. Lahore High Court

Awais Qarni v. The State and another
Criminal Appeal No.531/2020

Mr. Justice Muhammad Amjad Rafiq, Mr. Justice Tariq Saleem Sheikh

<https://sys.lhc.gov.pk/appjudgments/2024LHC6320.pdf>

Facts: The facts of the case that an individual was apprehended at a police checkpoint following the discovery of a large quantity of contraband concealed in a vehicle. The prosecution alleged recovery of the contraband from the vehicle's compartments, while the accused denied ownership, claiming to be an unaware passenger. The trial court convicted the accused. Hence; this criminal appeal.

Issues:

- i) What is the significance of maintaining the chain of custody and obtaining a positive forensic report in narcotics cases?
- ii) What are the key factors for the admissibility of photographs as evidence in criminal trial?

- iii) How does the Qanun-e-Shahadat Order, (QSO) 1984 define photographs as documentary evidence and what are the requirements for their authentication?
- iv) What are the requirements for proving documents under QSO, 1984 and how are primary and secondary evidence distinguished?
- v) What are the conditions and legal provisions under the QSO, 1984 for the admissibility and use of photographs as evidence in court?
- vi) What are the limitations on using inadmissible photographs and derivative testimony under the QSO, 1984?
- vii) What is the burden of proof required for the prosecution in criminal cases, particularly under the Control of Narcotic Substances Act (CNSA)?
- viii) Can the prosecution rely on weaknesses in the defence to secure a conviction?

Analysis:

- i) In narcotics cases, the prosecution must corroborate the recovery witnesses' evidence with a positive forensic report from the government analyst, prepared in accordance with legal standards. It is also essential to ensure and demonstrate the safe custody of the case property and the secure transmission of sample parcels to the laboratory for chemical analysis. Any break in the chain of custody of sample parcels renders the forensic report inconsequential and wrings the prosecution's case.
- ii) The admissibility of photographs as evidence depends on two key factors: relevance and authenticity. Relevance refers to the logical connection between the evidence and the facts at issue in the case.(...) Authentication can be established through various means, including circumstantial proof.(...) Authentication and relevance are intertwined.³ A document that cannot be authenticated lacks relevance (unless adduced as bogus). (...)if the photograph presented in court is an original print or created through a uniform process (e.g., digital copies from a camera), it qualifies as primary evidence and can be directly admitted.
- iii) In Pakistan, the Qanun-e-Shahadat 1984 (QSO) is the primary law on evidence, which mirrors many of the principles found in common law jurisdictions. According to Article (2)(1)(b) of the QSO, "document" means any matter expressed or described upon any substance by means of letters, figures, or marks or by more than one of those means, intended to be used, or which may be used, to record that matter. The illustrations in Article 2(1)(b) explain that words printed, lithographed, or photographed are considered as documents. Thus, a photograph falls within the aforesaid definition of "document".⁷ Photographs are treated as documentary evidence under Article 2(c). Article 78 requires that documentary evidence, including photographs, be authenticated.
- iv) Article 72 of the QSO stipulates that the contents of documents may be proved by primary or secondary evidence. Article 73 explains that primary evidence means the document itself produced for the court's inspection. Explanation 2 to Article 73 reads: "Where a number of documents are all made by one uniform process as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest, but where they are all copies of a common

original, they are not primary evidence of the contents of the original.” Article 74 explains “secondary evidence”. Article 75 mandates that documents must be proved by primary evidence, while Article 76 outlines the situations in which court may allow secondary evidence relating to a document. Article 78 of the QSO requires that documentary evidence, including photographs, be authenticated.

v) Article 164 of the QSO provides that the court may allow the production of any evidence that becomes available through modern devices or techniques. Digital photographs and electronic evidence are admissible under this provision if their authenticity is established through witness testimony or expert evidence. (...)Articles 70 and 71 permit a witness to testify about matters within their knowledge or perception. If the witness identifies the scene depicted in the photograph and their testimony aligns with their observations, their statements are admissible as direct evidence. Article 139 further allows the defence counsel to use the photograph to challenge the credibility of witnesses by comparing their statements during cross-examination with the scene shown in the photograph. If admitted, the photograph serves as substantive evidence, and Article 140 becomes relevant if it is used to refresh the witnesses’ memory. Article 151(3) further allows scrutiny of the witnesses’ credibility if inconsistencies or contradictions arise concerning the photograph. In short, when the photograph is authenticated and meets the admissibility requirements, subsequent statements of the witnesses, reflecting their personal knowledge, are valid and admissible.

vi) Conversely, a different analysis applies if the photograph is inadmissible because it fails to qualify as primary evidence or lacks proper authentication as secondary evidence. Article 70 of the QSO mandates that all facts, except the contents of documents, may be proved by oral evidence, while Article 71 requires that oral evidence must be direct. This restricts a witness to testifying only about facts they have directly perceived. Observations made after being shown an inadmissible photograph do not meet this standard. In such a scenario, the application of Article 139 is limited, as a party cannot contradict a witness using inadmissible material. Similarly, Article 140 becomes irrelevant because an inadmissible photograph cannot serve to refresh memory. While Article 151(3) allows for impeaching the credibility of a witness, the defence cannot rely on inadmissible evidence for this purpose. Accordingly, the court must disregard the photograph and any derivative testimony based on it because admitting such statements would violate the principles of evidentiary integrity.

vii) It is a fundamental principle of law that the prosecution must establish its case beyond a reasonable doubt, and any doubt must benefit the accused.⁹ This high standard upholds the presumption of innocence and guards against wrongful convictions. (...)The guiding principle for the safe administration of criminal justice is that the more severe the punishment, the higher the standard of proof required for conviction.

viii) It is a cardinal principle of law that the prosecution must stand on its own legs and cannot rely on weaknesses in the defence case to secure a conviction.

- Conclusion:**
- i) Chain of custody and a positive forensic report are crucial in narcotics cases.
 - ii) Photographs must be relevant and authenticated to be admissible.
 - iii) Photographs are documents requiring authentication under QSO.
 - iv) Primary evidence is preferred; secondary evidence requires justification.
 - v) See analysis No.v.
 - vi) See analysis No.vi.
 - vii) Prosecution must prove its case beyond reasonable doubt.
 - viii) Prosecution cannot rely on weaknesses of defence for conviction.

13. Lahore High Court, Lahore
Hamna Fahad vs. CCPO, Lahore etc.
Writ Petition No. 89 of 2025
Mr. Justice Muzamil Akhtar Shabir
<https://sys.lhc.gov.pk/appjudgments/2025LHC1.pdf>

Facts: Through this constitutional petition, the petitioner seeks recovery of her daughter and son Ismail Fahad from alleged illegal and improper custody of father and paternal uncle of the detenues.

Issues:

- i) Does the High Court have jurisdiction to alter the interim custody of the minors when the matter is already pending before the Guardian Court?
- ii) Are habeas corpus proceedings appropriate for determining complex disputes about the custody of minors?

Analysis:

- i).....this Court is in constitutional jurisdiction although has jurisdiction to handover temporary custody to anyone of the parent by directing the other to seek remedy before the Guardian Court, yet as matter is already pending before the Guardian Court, this Court is not inclined to declare that the minors had been snatched forcibly by anyone of the parent from the other or custody of said parent as illegal and improper which requires determination of disputed facts not permissible in the Constitutional jurisdiction of this Court, lest it may prejudice rights of the parties before the Guardian Court where proceedings for custody of minors are pending,...
- ii)....habeas corpus proceedings by the very nature and purport are summary in character and neither controversies are tried nor entire evidence is recorded under ordinary substantive and procedural laws under civil and criminal jurisdiction and such a jurisdiction being extraordinary in its very nature should be sparingly used because the plenary jurisdiction in the matter rests under other laws in other forums of special jurisdiction who should normally be allowed to exercise it in accordance with law. Reliance in this behalf may be placed on the judgments reported as Muhammad Rafique v. Muhammad Ghaffoor (PLD 1972 S.C. 06) and PLD 1997 S.C. 852 (Supra)....

Conclusion: i) In case of pendency of matter before guardian court, the High Court does not inclined to interfere into proceedings of the Guardian Court.

ii) The habeas corpus proceedings are summary in nature and neither controversies are tired nor evidence is recorded.

14. Lahore High Court
Muhammad Qaswar Hussain v. Judicial Magistrate Section, 30, Multan and others
ICA No. 292 of 2024
Mr. Justice Muzamil Akhtar Shabir, Mr. Justice Sultan Tanvir Ahmad
<https://sys.lhc.gov.pk/appjudgments/2024LHC6109.pdf>

Facts: This Intra Court Appeal (ICA) is against the dismissal of a constitutional petition challenging a magistrate’s decision to discharge an accused based on a report by an Investigating Officer from whom investigation has been transferred. The appellant also contested the initiation of proceedings against him under section 182 Pakistan Penal Code (PPC) while his private complaint on the same matter is pending.

Issues: i) Can proceedings under Section 182 PPC initiated during a pending complaint on the same subject matter?
 ii) Can police reinvestigate after a discharge order?

Analysis: i) in judgments reported “M.J.A. Gazdar Vs. The State” (1989 MLD 1694), “Ashfaq Ali Vs. The State” (PLD 1975 Karachi 87) and “Muhammad Murad Vs. The State” (1983 P.Cr.L.J. 1097) wherein it is provided that during pendency of complaint case, proceedings under Section 182 P.P.C. in a criminal case relating to same subject matter cannot be initiated,
 ii) It is important to note here that in view of the principles laid down in judgments reported as “Mian Muhammad Asif Vs. S.S.P. Operation, Lahore and 02 others” (2010 YLR 944), “Habib Ur Rehman and others Vs. The State” (1999 MLD 860), “Ashiq Hussain Vs. Sessions Judge, Lodhran and 3 others” (PLD 2001 Lahore 271) and “Muzafar Ahmad Vs. The State and 02 others” (2021 P.Cr.L.J. 1393) despite discharge order police authorities may reinvestigate the matter.

Conclusion: i) Section 182 PPC proceedings cannot be during pending complaints.
 ii) Police authorities may reinvestigate a matter even after a discharge order.

15. Lahore High Court
Miraj Zubair. v. RPO, etc.
W.P. No. 485 of 2025
Mr. Justice Muzamil Akhtar Shabir
<https://sys.lhc.gov.pk/appjudgments/2025LHC29.pdf>

Facts: This Writ Petition of Habeas Corpus is filed for the recovery of detenuue statedly in illegal and unlawful confinement of SHO.

Issues: i) Whether the High Court is competent to convert one Habeas Corpus petition proceedings into a bail petition?

Analysis: i) Needless to mention that this Court is competent to convert one type of proceedings into another type of proceedings which power also includes conversion of habeas corpus petition into bail application where court while dealing the habeas corpus petition came to the conclusion that detention of a person required justification and/or such detention was found to be illegal and unauthorized or had been effected on the ground of suspicion only.

Conclusion: i) Court is competent to convert one type of proceedings into another type of proceedings which power also includes conversion of habeas corpus petition into bail application.

16. Lahore High Court
M/s. Gulistan Power Generation Limited & 3 others v. The Bank of Punjab & 2 others
RFA No.872/2016
Mr. Justice Muzamail Akhtar Shabir
<https://sys.lhc.gov.pk/appjudgments/2019LHC5250.pdf>

Facts: The case pertains to a dispute over principal borrower and guarantor. The respondent/bank contended that guarantee is a continuing guarantee and same is enforceable. The appellants contested their liability as a guarantor on the ground that subsequent finance renewal agreements did not mention their guarantees.

Issues: i) Does the non-mentioning of personal guarantee in subsequent finance renewal agreements discharge the guarantors from their obligations?
 ii) When an application for leave to defend under section 10 of Financial Institutions (Recovery of Finances) Ordinance, 2001 be dismissed as not raising substantial questions of law or fact?

Analysis: i) Although learned Single Judge in Chambers has referred to the continuing guarantees of appellant Nos. 3 and 4 issued between 14.07.2003 to 01.07.2008 against renewals of finance facility but the said judgment is silent as to the effect of renewal agreements dated 01.07.2009 onwards, which only refer to continuing guarantee of appellant No.2 but not to the guarantees issued by appellant Nos. 3 and 4. Even the Plaint is silent to that effect, which only refers to personal guarantees of the appellant Nos. 3 and 4 up to the renewal of agreement for the years 2007-08. The effect of the afore-referred non-mentioning of the personal guarantees of the appellant Nos. 3 and 4 was required to be determined while passing the impugned judgment, which is not forthcoming on the record, therefore, the said appellants were at least entitled for granting leave to defend to establish that their guarantees had been discharged.
 ii) So far as contentions of other appellants are concerned, learned Single Judge in Chambers has properly appreciated the controversy and rightly dismissed their

applications for leave to defend as no substantial question of law and facts requiring recording of evidence has been raised and application for leave to defend was not in consonance with the provisions of Section 10 (3, 4 and 5) of the Ordinance and was rightly refused.

Conclusion: i) See analysis No.i.
ii) ‘See analysis No.ii.

17. Lahore High Court
Muhammad Imran v. The State and another
Criminal Appeal No.628 of 2022
Mr. Justice Ch. Abdul Aziz, Mr. Justice Sadiq Mahmud Khurram
<https://sys.lhc.gov.pk/appjudgments/2024LHC6112.pdf>

Facts: Appellant challenged his conviction and sentence passed by learned Sessions Judge/Judge Special Court (CNS), under Section 9(c) of CNS Act 1997 to suffer rigorous imprisonment for life along with fine of Rs.50,00,000/- and in default whereof to further undergo simple imprisonment for 01-year, through this appeal.

Issues:

- i) What is the legal impact of dishonest improvements made by witnesses, upon the case of prosecution?
- ii) What is the scope of contradictions in prosecution evidence?
- iii) Whether incriminating articles recovered from the accused can be read in evidence if not produced and tendered in accordance with Rules & Orders of the Lahore High Court Lahore Volume-III, Chapter-24 Part-B?
- iv) Whether Section 29 CNSA is a deviation from the general law wherein throughout a criminal trial, the burden of proving a case is upon the shoulders of prosecution?

Analysis:

- i) In a wrestle with the proposition, we came across observation of the Supreme Court of Pakistan given in case reported as Muhammad Arif v. The State (2019 SCMR 631) wherein it is held that the portion of deposition of a witness which is brought on record through dishonest improvement is destined to be discarded from consideration.
- ii) The expression “contradiction” is wide in scope and brings within its compass all the legal omissions, shortcomings and lacunas, besides that is applicable in situations when the acceptance of deposition of one witness necessitates the rejection of another.
- iii) For tendering in evidence, the articles having incriminating worth, guidelines are provided in the Rules & Orders of the Lahore High Court Lahore Volume-III, Chapter-24 Part-B. In the referred chapter the procedure is provided for bringing on record the articles and documents having nexus with the case.
- iv) According to Section 29 though in the wake of recovery of some contraband substance a presumption adverse to the accused facing trial is to be marked but still prosecution cannot be absolved from obligation of proving its case beyond shadow of any doubt. The burden of Section 29 will tilt towards accused only if

the recovery of narcotics, its nexus with the accused along with origin as contraband substance is proved by the prosecution beyond shred of any ambiguity. The language of Section 29 is akin to the wordings of Section 8 of The Suppression of Terrorist Activities (Special Court) Act 1975, Section 9 of the Offences In Respect of Banks (Special Courts) Ordinance 1984 and Section 14 of the National Accountability Ordinance, 1999. All the afore-mentioned provisions came under judicial scrutiny and it was resolved by the courts that prosecution cannot be given leverage of not proving its case against the accused beyond any doubt and failure to discharge such obligation will culminate in judgment of acquittal.

- Conclusion:**
- i) See above analysis No.1.
 - ii) See above analysis No.2.
 - iii) The incriminating articles recovered from the accused if not produced and tendered in accordance with Rule 14-F & 14-H (ibid), thus cannot be read in evidence.
 - iv) Section 29 of CNSA is not a deviation from the general law throughout a criminal trial as the burden of proving a case is upon the shoulders of prosecution.

18. Lahore High Court
Kousar Abbas alias v. The State
Criminal Revision No. 136 of 2021
Mr. Justice Anwaarul Haq Pannun
<https://sys.lhc.gov.pk/appjudgments/2024LHC6266.pdf>

Facts: The petitioner was convicted for stabbing and injuring the victim due to a dispute. The trial and appellate courts upheld the convictions, prompting this revision petition.

- Issues:**
- i) What is the definition of hypochondrium and its anatomical boundaries?
 - ii) What is the definition of a body cavity and its role in enclosing vital organs?
 - iii) What constitutes a Jaifah injury, and how does it relate to penetration into the body cavity and damage to internal organs?
 - iv) Does the non-examination of doctor as a witness and the admission of a photocopy of the Surgical Notes as evidence adversely affect the prosecution's case?

Analysis:

- i) It may be observed that in the Merriam- Webster Medical Dictionary, the hypochondrium is defined as "Either hypochondriac region of the body, located beneath the lower ribs and above the abdomen." whereas in Dorland's Medical Dictionary, "One of the two regions of the abdomen that lie on either side of the epigastrium and below the ribs." Generally the term hypochondrium has the following dictionary meanings: (1) Anatomical Context: Either of the two regions of the upper abdomen situated on each side of the epigastrium and beneath the lower ribs. (2) Etymological Context: Derived from the Greek words "hypo-"

(under) and "chondros" [cartilage, referring to the cartilage of the ribs]. The hypochondrium refers to an anatomical region of the human abdomen, located on either side of the upper abdomen, beneath the ribcage. It is divided into two parts i.e. the right hypochondrium which contains the liver [especially the right lobe], gallbladder, and part of the kidney and the left hypochondrium, contains the stomach, spleen, tail of the pancreas, part of the kidney, and parts of the colon respectively

ii) The body cavity, on the other hand has been defined in the Oxford English Dictionary as "A hollow space within the body that contains organs or other structures, such as the thoracic cavity or abdominal cavity." In Merriam-Webster Medical Dictionary:- "A cavity in an animal body, specifically the coelom, which is the main body cavity housing organs." And in Cambridge Dictionary:- "An opening into the human body, such as the mouth, anus, or similar spaces that house internal structures." Thus, the body cavity means a part of the body under which vital organs are located.

iii) An injury penetrating into the body cavity wherein the vital organs are located is treated as Jaifah. Further collateral damage or injury to the internal organs referred hereinabove inside the abdomen is sufficient to bring the case within the purview of Jaifah... injury No.2 i.e. "a stab wound 2 x 2 x deep going left side of abdomen in left hypochondrium", clearly falls within the definition of Jaifah.

iv) The non-examination of Dr. Omer Balouch as PW as well as non-production of the original Surgical Notes in evidence, therefore, have no adverse bearing upon the prosecution's case, and the learned counsel for the petitioner can yield no fruit and draw any benefit on the strength of his argument that photocopy of the Surgical Notes has illegally been placed on record as Exh:PH. The reliance of the learned counsel for the petitioner on the case reported as "Pervaiz Khan versus The State"(PLD 1998 Lahore 84), being inapt in the facts and circumstances of instant case, does not advance the cause of the petitioner rather it affirms view of this court as discussed above.

- Conclusion:**
- i) The hypochondrium is a specific anatomical region located beneath the lower ribs and above the abdomen, with defined boundaries including organs like the liver, spleen, and stomach.
 - ii) A body cavity is a hollow space within the body that houses vital organs such as the thoracic or abdominal cavity.
 - iii) A Jaifah injury is characterised by penetration into the body cavity and causing damage to internal organs
 - iv) The unavailability of the operating doctor's testimony and reliance on photocopied Surgical Notes do not adversely affect the prosecution's case.
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19. Lahore High Court
Muhammad Waqas Gill v. Rifat Awan, etc.
Mr. Justice Muhammad Waheed Khan
Cr.Revision No.1601 of 2022
<https://sys.lhc.gov.pk/appjudgments/2024LHC6139.pdf>

Facts: Judicial Magistrate Sec.30 convicted petitioner in complaint filed under Section 6(5)(b) of the Muslim Family Laws Ordinance, 1961 with allegation of contracting second marriage without permission from first wife and Arbitration Council. Criminal Appeal preferred by the convict and criminal Revision filed by the complainant were dismissed from Sessions Court and the judgment has been challenged by convict through Revision petition before Hon'ble High Court.

Issues: Whether Judicial Magistrate has jurisdiction for trial of complaint filed under section 6(5)(b) of the Muslim Family Laws Ordinance, 1961.

Analysis: Now, advertent to the moot point raised by learned counsel for the petitioner qua the jurisdiction of the learned Magistrate Sec-30, to entertain and decide the criminal complaint under the Ordinance. So, it would be in the fitness of things to reproduce the relevant provisions of section 5 of the West Pakistan Family Courts Act, 1964, which are as under... And through amendment in the Punjab Family Court (Amendment) Act, 2015 (XI of 2015) dated 18.3.2015 a Family Court was given the power of the Judicial Magistrate 1st Class under the Cr.P.C., 1898 for the purpose of taking cognizance and trial of any offence under The Muslim Family Laws. The relevant amendments are reproduced as under... on going through sub-section (3) of the section 20 of the Act, there is hardly any cavil with the proposition that only a Family Court can take cognizance of the offence on the complaint of the Union Council, Arbitration Council or aggrieved party and obviously the respondent was the aggrieved party, however, I have to see whether the learned Judicial Magistrate was additionally given the powers of Judge Family Court or not... Since on going through the above referred provision of Muslim Family Law, there is no cavil with the proposition that only the Family Courts have given the exclusive jurisdiction to entertain the issue and adjudicate upon the matters specified in [Part-1 of the schedule], so, the conducting of the trial by the learned Judicial Magistrate was certainly *coram non-Judice*, and a nullity, meaning thereby that very inception of the trial was not in accordance with law and it is trite that if a base of action was wrong, all superstructure raised thereon would have no sanctity under the law... In a recent pronouncement rendered by this Court in case of "*Muzaffar Nawaz v. Ishrat Rasool and others*" (2022 YLR 1920), this Court had set-aside that judgments of both the Courts below on the same point, that the learned Judicial Magistrate was not empowered to hold the trial under the "Ordinance".

Conclusion: Judicial Magistrate Section-30 has no jurisdiction to entertain complaint filed under the Muslim Family Laws ordinance, 1961.

20. **Lahore High Court.**
Muhammad Arif and another v. Haji Khalid Mahmood (deceased) through L.Rs
C.R. No.45106 of 2023
Mr. Justice Rasaal Hasan Syed
<https://sys.lhc.gov.pk/appjudgments/2024LHC6286.pdf>

Facts: A civil revision petition was filed challenging concurrent judgments by the trial and appellate courts decreeing specific performance of a sale agreement for immovable property. The petitioners contested the agreement's authenticity contending it was a security arrangement, not a sale agreement.

Issues:

- i) Can a party contest a sale agreement based on an unsubstantiated claim under the Qanun-e-Shahadat Order, 1984?
- ii) Are oral statements admissible to contradict, vary, add or subtract the terms of a written agreement?
- iii) Under what circumstances can concurrent findings of fact by lower courts be interfered with in revisional jurisdiction?

Analysis:

- i) The case of the respondents was that petitioners entered into an agreement of sale in favour of deceased... The stance of petitioners was that in fact there was no sale agreement rather it was an agreement for investment in the business of the petitioners. The petitioners were unable to prove their counter-version in regard to document Ex.P1. Plea raised in the written statement about the nature of document as security appears to be afterthought and, as such, inadmissible and also impermissible as per Articles 102, 103 and 104 of the Qanun-e-Shahadat Order 1984.
- ii) Article 102 contemplates that when the terms of a contract... have been reduced to the form of a document no evidence shall be given in proof of the terms... except the document itself or secondary evidence of its contents... Article 103... provides that the terms of any such contract... shall not be admitted as between the parties... for the purpose of contradicting, varying, adding, or subtracting from its terms.
- iii) No misreading or non-reading of evidence or any material discrepancy therein could be highlighted in the course of hearing of the petition which could vitiate the findings of the courts below. No ground for interference could be made out in the concurrent findings of fact in the circumstances. Revision petition is devoid of substance and is dismissed.

Conclusion:

- i) A sale agreement cannot be contested based on an unsubstantiated claim under Articles 102, 103, and 104 of the Qanun-e-Shahadat Order, 1984.
- ii) Oral statements cannot vary, add to, or contradict the terms of a written agreement.
- iii) Concurrent findings by lower courts can only be interfered with if there is misreading, non-reading, or material discrepancy in the evidence.

21. **Lahore High Court**
Sui Northern Gas Pipelines Limited v. Fazal Hussain (deceased) through L.Rs.
C.R. No.1169 of 2013
Mr. Justice Rasaal Hasan Syed
<https://sys.lhc.gov.pk/appjudgments/2024LHC6297.pdf>

Facts: Petitioner brought his suit with the stance that he was a consumer of petitioner utility company. While calculating bills, some error was detected and the suit amount was concluded to be due against the respondent. On failure to pay the said amount, gas supply was disconnected, which fact brought about accrual of cause of action and the instant suit was filed. After going through the procedural formalities, suit was dismissed which was affirmed in appeal, hence, the instant Civil Revision.

Issues:

- i) What is the legal fate of the judgment which is recorded without considering the evidence?
- ii) What is the mandate of first appellate court while hearing appeal?
- iii) What are the legal components of the “judgment” of the appellate Court?

Analysis:

- i) The judgment recorded without considering the evidence cannot be approved as it violates the provision of Rule 31 of Order XLI, C.P.C. which contemplates that the appellate court shall deliver the judgment in writing and shall state points for determination, the decision thereof and the reasons for the decision.
- ii) The appellate court in first appeal is duty-bound to consider the case de novo for reaching a conclusion (...) In Punjab Industrial Development Board v. United Sugar Mills Limited (2007 SCMR 1394) it was observed to the effect that it is duty of the appellate court to decide the controversy between the parties after application of independent judicial mind and that mere reproduction of the judgment of trial court and thereafter dismissing the appeal could not be in consonance with the law and that after the insertion of section 24-A in the General Clauses Act, 1894, even the public functionaries are duty bound to decide the applications of citizens while exercising statutory powers with reasons after judicial application of mind
- iii) In Abdul Hameed and 7 others v. Abdul Razzaq and 3 others (PLD 2008 Lah. 1) it was observed to the effect that the judgment of appellate court shall be error free, concise, consistent, coherent and comprehensible irrespective of the stylistic differences and that the principles, parameters and requirements of a judgment are that judgment should contain a concise statement of case, points for determination, decision thereon and reasons for such decision manifesting application of mind to resolve the issue involved which ought to be self-contained, unambiguous, easily intelligible, lucid, open only to one interpretation and thus leaving nothing to guesswork or probabilities on matters under determination and should also be self-speaking, well-reasoned and

analytical reflecting due consideration of facts, law and contentions of the parties founded on legal grounds and the evidence on record.

- Conclusion:**
- i) A judgment without having the attributes of Rule 31 of Order XLI, C.P.C., cannot be approved as judgment.
 - ii) The appellate court is invested with the legal duty firstly to consider the case de novo and secondly to decide the controversy after application of independent judicial mind.
 - iii) See above analysis No. iii

22. Lahore High Court
Dost Muhammad (deceased) through L.Rs and others v. Muhammad Sarwar and others
Writ Petition No.48544/2024
Mr. Justice Rasaal Hasan Syed
<https://sys.lhc.gov.pk/appjudgments/2024LHC6272.pdf>

Facts: Respondents filed a suit for declaration claiming their Islamic share from the inheritance of their predecessor. In that suit an application for appointment of receiver under Order XL, Rule 1, C.P.C. was filed which was accepted by the trial Court and the same order was upheld by the Learned Appellate Court. The petitioners filed a constitutional petition challenging the same orders.

Issues:

- i) Under what provisions of law a receiver is appointed?
- ii) What parameters should be kept in mind while exercising discretion for appointing a receiver?
- iii) What principles protect the rights of a bona fide purchaser and co-sharer in property disputes while appointing a receiver?

Analysis:

- i) Rule 1 of Order XL, Code of Civil Procedure provides that where it appears to the court that it is just and convenient to appoint a receiver for preservation of property, the court can appoint a receiver.
- ii) In the case of *Sardar Wali Muhammad v. Sardar Muhammad Iqbal Khan Mokal and 7 others* (PLD 1975 Lah.492) it was observed that appointment of Receiver was not a matter of course and that such discretion was to be exercised in accordance with principles enunciated by the superior courts which included the consideration that this power should be sparingly used, to safeguard the interest of all the parties as well as the property which is subject matter of the litigation and that possession of persons in bona fide occupation of the property should not be disturbed unless there are allegations of wastage or dissipation of property or apprehension of irreparable loss and injury.
- iii) In *(Shahzadi) Sharif Sultana v. (Brig. Shahzada) Sher Muhammad Jan and another* [PLD 1958 (W.P.) Lah. 288] it was observed one of the principles to be kept in view while considering the application for appointment of Receiver was that bona fide occupant of property cannot be disturbed in the garb of

appointment of Receiver and that co-sharer in undivided property is entitled to retain the possession till such time the property is partitioned and specific share is allocated.

- Conclusion:**
- i) See above analysis No i.
 - ii) The discretion to appoint a receiver should be sparingly used, to safeguard the interest of all the parties as well as the property.
 - iii) See above analysis No iii.

23. Lahore High Court
Muhammad Sarfraz etc. v. The State etc.
CrI. Misc. No.6425-M of 2024
Mr. Justice Sadiq Mahmud Khurram
<https://sys.lhc.gov.pk/appjudgments/2024LHC6200.pdf>

Facts: The facts of the case that petitioners are accused in a criminal case and subsequently acquitted by the trial court on their application. The complainant challenged this acquittal through a criminal revision petition, which was allowed by the appellate court, directing a retrial of the petitioners. Hence; this petition.

- Issues:**
- i) What remedy is provided under section 417 Criminal Procedure Code (Cr.P.C.) against an order of acquittal?
 - ii) Can revision proceedings be entertained under section 439(5) Cr.P.C. if an appeal lies?
 - iii) Is revision under section 439 Cr.P.C. allowed if appeal lies under section 417 Cr.P.C.?
 - iv) Does section 417(2-A) Cr.P.C. bar revision when appeal is available?

- Analysis:**
- i) It has been provided under section 417 Cr.P.C., that if an accused is acquitted in a case, a person aggrieved by the order of acquittal passed by any court other than a High Court may within 30 days file an appeal against such order and the Public Prosecutor may also present an appeal to the High Court from the order of acquittal passed by any court other than a High Court.
 - ii) It is also a fact that under section 439 sub-section (5) Cr.P.C., it has been expressly provided by law that where under the Cr.P.C., an appeal lies then no proceedings by way of revision shall be entertained at the instance of the party who could have appealed
 - iii) It does not matter whether the acquittal of an accused in a case has been ordered after the recording of evidence or without recording of evidence and as it is an acquittal in a case therefore an appeal has to be filed under section 417 Cr.P.C. . No proceedings by way of criminal revision petition under section 439 Cr.P.C. are envisaged in a case where accused has been acquitted by any court other than a High Court.
 - iv) After introduction of subsection (2-A) in section 417 of the Cr.P.C. any person aggrieved by an order of acquittal has been conferred a right to file an appeal against the acquittal. In presence of remedy by way of appeal, the revision is not

competent under section 439(5) of the Cr.P.C.”

- Conclusion:**
- i) Section 417 Cr.P.C. allows an aggrieved person or Public Prosecutor to appeal an acquittal within 30 days, except for orders by the High Court.
 - ii) Section 439(5) Cr.P.C. prohibits revision proceedings when an appeal is available under the Code.
 - iii) Appeal under Section 417 Cr.P.C. are mandatory for acquittal, regardless of whether evidence was recorded, barring revision under Section 439 Cr.P.C.
 - iv) Section 417(2-A) Cr.P.C. ensures appeal rights, barring revision where appeal lies.

24. Lahore High Court
Mst. Nadia alias Nadu Mai v. The State
Criminal Appeal No. 10-J of 2021
Mr. Justice Sadiq Mahmud Khurram
<https://sys.lhc.gov.pk/appjudgments/2024LHC6207.pdf>

Facts: The appellant was convicted by the trial court under Section 302(b) PPC for committing Qatl-i-Amd of her sister-in-law. The conviction was based on allegations that she manually strangled the deceased. This decision was challenged, claiming evidentiary inconsistencies and lack of independent corroboration.

- Issues:**
- i) Whether delayed recording of a witness statement under Section 161 Cr.P.C. diminishes its evidentiary value?
 - ii) Can chance witnesses be relied upon without independent corroboration of their presence at the scene of the crime?
 - iii) What is the impact of inconsistency between ocular testimony and medical evidence on the prosecution's case in a murder involving throttling?
 - iv) Whether the evidence of prosecution witnesses, disbelieved for the acquitted co-accused, can be accepted as credible against the other co-accused?
 - v) Whether the burden of proof shifts to the accused, and the onus lies on them to explain the circumstances of an unnatural death occurring in their house?

Analysis:

- i) 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
- ii) In this manner, both the prosecution witnesses namely Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) 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
- iii) I have noted with serious anxiety that the ocular account of the occurrence as furnished by the prosecution witnesses namely Muhammad Bukhsh (PW-4) ,

Nasrullah (PW-5) and Muhammad Jalal (PW-12) is inconsistent with the medical evidence as furnished by Dr. Afroze Gul (PW-8) and flawed beyond mending, resulting in disfiguring the complexion of the whole prosecution case beyond reparation and recognition(...) Dr. Afroze Gul (PW-8), on examining the dead body of Kalsoom Mai (deceased) did not observe any marks of violence on the neck of the dead body of the deceased(...)As narrated above, had the deceased been throttled in the manner as stated by Muhammad Bukhsh (PW-4) and Nasrullah (PW-5) and Muhammad Jalal (PW-12) then Dr. Afroze Gul (PW-8) must have observed the evidence of marks of pressure by the thumb and the fingertips, fingertip bruises, linear or crescentic marks produced by the fingernails, abrasions and bruises on the mouth, nose, cheeks forehead, lower jaw or any other part of the body, however she did not. The oral account of the occurrence, as given by Muhammad Bukhsh (PW-4) , Nasrullah (PW- 5) and Muhammad Jalal (PW-12), cannot be said to be in accordance with the medical evidence, rather is proved to be contrary to it.

iv) The proposition of law in Criminal Administration of Justice, that a common set of witnesses can be used for recording acquittal and conviction against the accused persons who were charged for the commission of same offence, is now a settled proposition. The august Supreme Court of Pakistan has held that partial truth cannot be allowed and perjury is a serious crime. This view stems from the notion that once a witness is found to have lied about a material aspect of a case, it cannot then be safely assumed that the said witness will declare the truth about any other aspect of the case. I have noted that the view should be that "*the testimony of one detected in a lie was wholly worthless and must of necessity be rejected.*" If a witness is not coming out with the whole truth, then his evidence is liable to be discarded as a whole, meaning thereby that his evidence cannot be used either for convicting the accused or acquitting some of them facing trial in the same case. This proposition is enshrined in the maxim *falsus in uno falsus in omnibus*.

v) The prosecution is bound to prove its case against an accused person beyond a reasonable doubt at all stages of a criminal case and in a case where the prosecution asserts the presence of some eye-witnesses and such claim of the prosecution is not established by it, there the accused person could not be convicted merely on the basis of a presumption that since the murder of a person had taken place in her house, therefore, it must be she and none else who would have committed that murder(...) 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(...)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 that 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(...) 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 to 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 her innocence, but only to produce evidence enough to create doubts in the prosecution's case(...) Throughout the web of the Law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the accused's guilt subject to any statutory exception. No matter what the charge, the principle that the prosecution must prove the guilt of the accused is the law and no attempt to whittle it down can be entertained.

- Conclusion:**
- i) The delayed recording of statements under Section 161 Cr.P.C. diminishes their evidentiary value.
 - ii) The testimony of chance witnesses without corroboration is insufficient for conviction.
 - iii) Contradictions between medical and ocular evidence negate the prosecution's case.
 - iv) The doctrine of *falsus in uno, falsus in omnibus* applies to discredit unreliable witness testimony.
 - v) See above analysis No.v.

25. Lahore High Court
Ahsan Allahi Zaheer and another v. Government of Punjab through Secretary, Primary and Secondary Healthcare Department Punjab Lahore and three others.
Review Application No.07 of 2024 in Intra Court Appeal No. 57 of 2024
Mr. Justice Sardar Muhammad Sarfraz Dogar, Mr. Justice Sadiq Mahmud Khurram
<https://sys.lhc.gov.pk/appjudgments/2024LHC6179.pdf>

Facts: Respondent No.2 advertised the posts of BS04 in pursuance of Recruitment Policy 2022. Applicants qualified for the said posts and Job Offer Letters were issued in their names. Upon the completion of the initial contract, the contract periods of the applicants were not extended and they were terminated. Applicants challenged their termination through Constitutional Petition which was dismissed. Same was the fate of Intra-Court Appeal, resultantly, the instant Review Application.

- Issues:**
- i) What is the law relating to the power of review?
 - ii) In what situation, review application is maintainable?
 - iii) In what circumstance, power of review can be exercised?
 - iv) Whether the points already raised and considered can furnish the ground of review jurisdiction?
 - v) When a judgment can be reviewed?
 - vi) When, review is not legally permissible?

Analysis:

- i) Power of review is provided under section 114 and Order XLVII, Rule 1 of the Code of Civil Procedure, 1908.
- ii) Under section 114, C.P.C. a review application is maintainable for enabling the Court to correct the errors.
- iii) Power of review can only be exercised when an error or mistake is manifestly shown to float on the surface of the record, which is so patent that if allowed to remain intact, would perpetuate illegality and gross injustice.
- iv) It is a settled proposition of law that the points already raised and considered cannot be re-agitated in review jurisdiction.
- v) A judgment can be reviewed only when the error is apparent on the face of the record and that it must be so manifest, so clear, that no Court could permit such an error to remain on record.
- vi) It is also a settled question of law that review also cannot be allowed on the discovery of some new material if such material was available at the time of trial, the appeal or the revision as the case may be. Review cannot be made a pretext for re-arguing the whole case and the matter cannot be revived under the garb of a review application.

Conclusion:

- i) See above analysis No.i
- ii) A review application lies before the Court in order to rectify the errors.
- iii) Court can exercise the power of review in case of apparent error leading to injustice
- iv) See above analysis No. iv
- v) See above analysis No. v
- vi) Legally, review is not allowed if new material is discovered and the it was available at the time of trial, appeal or revision. In review, neither the matter is re-argued nor revived.

26. Lahore High Court, Bahawalpur Bench, Bahawalpur, Sajjad Ahmad v. The State, etc Criminal Appeal No.124-J of 2023 Mr. Justice Sadiq Mahmud Khurram.
<https://sys.lhc.gov.pk/appjudgments/2024LHC6159.pdf>

Facts: Appellant was convicted by the trial court for raping a minor under Section 376(3) PPC and sentenced to life imprisonment. His co-accused were acquitted. The appellant challenged his conviction and sentence through this appeal.

Issues:

- i) Who is competent to testify?
- ii) How the competency of a child witness is tested, and when a child is considered as a competent witness?
- iii) Whether evidence of a child witness is worthy of reliance and if so, whether a conviction be awarded relying upon sole testimony of a child witness?

- iv) Whether delay in reporting the crime involving person's honour and reputation can be resolved in favor of accused?
- v) Whether DNA testing is a requirement of the law?
- vi) Which kind of contradictions, improvements cannot be relied upon?
- vii) Which kind of contradictions are ignorable?

Analysis:

- i). Article 3 of the Qanun-e-Shahadat Order, 1984 contemplates that all persons are competent to testify unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions, by tender or extreme old age, disease, whether of body or mind or any other cause of the same nature.
- ii) For a child witness, normally the courts conduct "*voir dire test*" under which the court before examination puts certain preliminary questions to the child, which bear no connection with the case so as to judge the child's competency and understanding. If the child is capable of answering those questions properly and deposes in a smart manner, then the child is considered as a competent witness.
- iii) A child who also happens to be a victim of an offence is competent to testify as a witness, and the deposition would be worthy of reliance provided the Court is satisfied that he or she, as the case may be, is intelligent and understands the significance of entering the witness box. A conviction can also be handed down placing reliance on the sole testimony of a child witness.
- iv) Delay in reporting the crime to the police in respect of an offence involving a person's honour and reputation and which society may view unsympathetically could play on the minds of a victim and her family and deter them from going to the police. Therefore, in such a situation it is very obvious that even if the report has been lodged with a delay, it will not bring complications and otherwise not beneficial for an accused who has been charged with the offence the punishment of which would entail to the death penalty or imprisonment for life.
- v) DNA testing is not a requirement of the law.
- vi) Where the omissions amount to a contradiction, creating serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon.
- vii) Minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety.

Conclusion:

- i) See above analysis No.i.
- ii) Competency of a child witness is tested through *voir dire test* and child giving rational answers of questions is considered as a competent witness.
- iii) Evidence of child witness is worthy of reliance and conviction can be awarded relying upon sole testimony of a child witness.
- iv) Such delay is not beneficial for an accused.
- v) See above analysis No.v.

- vi) See above analysis No.vi.
- vii) See above analysis No.vii.

27. Lahore High Court
Muhammad Ammar Shafi & 02 others v. The State & another
Wajid Hussain Vs Muhammad Ammar Shafi & 03 others
Criminal Appeal No. 26878 of 2024.
Criminal Revision No. 32182 of 2024
Mr. Justice Muhammad Amjad Rafiq
<https://sys.lhc.gov.pk/appjudgments/2024LHC6125.pdf>

Facts: Accused/appellants faced trial before learned Additional Sessions Judge, Lahore in case under sections 302/34 PPC (offence under Sections 337-F(i)/420/468 and 471 PPC were added during investigation) and on conclusion of trial accused/appellants were convicted under section 316 PPC read with Section 34 PPC and sentenced to diyat of Rs.19,35,594/-, to be paid by all the accused/appellants jointly and in lump-sum to the legal heirs of , deceased and simple imprisonment for five years each. Criminal Appeal has been filed by accused/appellants against their above conviction and sentence, whereas, Criminal Revision has been brought by the complainant seeking enhancement of sentence of accused/ appellants; both these matters are being decided by this single judgment.

Issues:

- i) What are the requirements for using CCTV footage in evidence?
- ii) Whether the electronic data in the form of video/audio/pictures obtained from the Punjab Safe City Authority under the Punjab Safe City Authority Act, 2016, is admissible as evidence?
- iii) What is the effect of conflict in ocular and medical account?
- iv) Whether medical evidence can be useful to establish the identity of the accused person?

Analysis:

- i) Thus, trial Court has not met the requirement of Article 71 & 139 of Qanun-e-Shahadat Order, 1984 because CCTV footage can be used either as the documentary evidence or the real evidence. When it is being used as documentary evidence it must be shown to the witness while recording his statement and when it is used as real evidence then court must inspect it with some observations and mere marking it as “P” does not fulfill the requirement. Thus, prosecution has failed to prove the contents of CD in accordance with the principles of evidence. Reliance in this respect is placed on case reported as “NUMAN alias NOMI and others Versus The STATE” (2023 PCr.LJ 1394) & a case approved for reporting, CrI. Appeal No.592- 23“FAKHAR IQBAL SHAH VS STATE ETC.” (2024 LHC 4364).
- ii) Regulation-9 makes such data as an admissible piece of evidence and explains its presentation in proper form before the Court, format of report with protocols, rearrangement of evidence in consultation with prosecutor; understanding of electronic evidence by the Court; clarity and re-examination by Chief operating

officer. Here it is for reference;..... The cumulative effect of above provisions explains that data in the form of video/audio/pictures obtained from IC3 under Punjab Safe City Authority Act 2016 and regulations made thereunder in due course of process shall be deemed genuine and admissible in evidence without sending such video/audio/pictures to Punjab Forensic Science Agency. However, such electronic data shall be read in evidence in conjunction with other explanation like photogrammetry test etc. of accused visible therein. In the instant case prosecution has failed to prove the due process adopted for obtaining the data from Safe City Authority nor Electronic Data Certificate was produced about genuineness of such data. Thus, CD or the pictures, the sole alleged impactful evidence of the prosecution, are not helpful to be read in the evidence.

iii) Under the aforementioned circumstances, medical evidence is not supporting the ocular account rather it is in conflict with the same. In such circumstances, conflict in ocular and medical account is damaging for prosecution. Reliance is placed on case reported as “MUHAMMAD IDREES and another Vs. The STATE and others” (2021 SCMR 612)

iv) Moreover, medical evidence by itself does not throw any light on the identity of the offender. Such evidence may confirm the available substantive evidence with regard to certain facts including seat of the injury, nature of the injury, cause of the death, kind of the weapon used in the occurrence, duration between the injuries and the death, and presence of an injured witness or the injured accused at the place of occurrence, but it does not connect the accused with the commission of the offence. It cannot constitute corroboration for proving involvement of the accused person in the commission of offence, as it does not establish the identity of the accused person.

- Conclusion:**
- i) When it is being used as documentary evidence it must be shown to the witness while recording his statement and when it is used as real evidence then court must inspect it with some observations and mere marking it as “P” does not fulfill the requirement.
 - ii) Such data if obtained from IC3 in due course of process shall be deemed genuine and admissible in evidence without sending such video/audio/pictures to Punjab Forensic Science Agency, however, there should be photogrammetry test etc. of accused visible therein.
 - iii) conflict in ocular and medical account is damaging for prosecution.
 - iv) It does not establish the identity of the accused person.

28. Lahore High Court, Lahore
Maqbool Ahmad vs. Addl. District Judge and others
Writ Petition No. 4183 of 2022
Mr. Justice Sultan Tanvir Ahmad
<https://sys.lhc.gov.pk/appjudgments/2024LHC6308.pdf>

Facts: The respondents had filed an application under Order VI Rule 17 of the Code of Civil Procedure, 1908, during the proceedings of the civil suit after recording of

the evidence of the parties, with the prayer that they may be permitted to insert the word “declaration” in the heading as well as to allow them to make amendment to the effect that order passed by the District Collector and the subsequent actions of the revenue authorities are beyond jurisdiction. The application was accepted by the trial court and revision against the order was dismissed by the District Court. The concurrent findings have been assailed through writ petition before High Court.

Issues i) What are the legal parameters for deciding application for amendment in pleadings under Order VI Rule 17 of the Code of Civil Procedure?

Analysis: i) Order VI Rule 17 of the Code provides that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. The Supreme Court in case titled “Mst. Ghulam Bibi and others versus Sarsa Khan and others” (PLD 1985 Supreme Court 345) observed that this rule can be divided into two parts. In the cases falling under the first part, the Court has discretion but under the second part i.e. when the amendment is necessary for the purpose of determining the real question, it becomes the duty of the Court to permit the amendment, however, subject to an important condition that the nature of the suit is not changed by amendment.... A learned Division Bench of the Peshawar High Court in case titled “Muhammad Zaman versus Siraj-ul-Islam and 11 others” (2013 YLR 1548) has observed that the word “alter” used in the above rule gives a bit wider power than the word “amendment”, if Court comes to the conclusion that the same is necessary to do the complete and substantial justice.... This Court in Iftikhar Ahmad case (supra) has recently considered the aspect of delay in applying for amendment while keeping in view the wording of the rule which provides that amendment can be made “at any stage of the proceedings”. This Court has reached to the decision that the amendment can be permitted even in appeal or revisional jurisdiction, when it is just. ... The Supreme Court of Pakistan has also discussed and concluded that amendment should be liberally allowed provided that the same does not cause injury to the other side... The question of limitation can also be an important factor, when necessitated by facts of the case, while dealing with the application of amendment.... some important factors, which are only illustrative and not exhaustive, that can be kept in my mind while dealing with the application for amendment are (i) the intention of the applicant seeking to amend pleadings; (ii) the question of limitation if applicable; (iii) refusal or acceptance of amendment should not lead to injustice or injury to opponent side; (iv) efforts should be made to avoid multiplicity of litigation; (v) the nature of the suit and cause of action originally set-up and (vi) if the amendment is necessary for the purpose of determination of the real question in controversy between the parties provided subject matter of suit remains unchanged.

Conclusion: i) See above analysis No. i

LATEST LEGISLATION/AMENDMENTS

1. Vide Notification in official Gazette of Pakistan dated 28-12-2024, The National Forensics Agency Act, 2024 was promulgated.
2. Vide The Societies Registration (Amendment) Act, 2024 dated 29-12-2024, a new section 21 was added in the Societies Registration Act, 1860.
3. Vide notification No.SO(E-I)4-5/2021 (TEVTA) (Rules) dated 25-11-2024, The Punjab Apprenticeship Rules, 2024 are made.
4. Vide notification No.SO(H-II)3-3/2021(P-I) dated 25-11-2024, the first schedule of the Punjab Central Business District Development Authority Act, 2021 was amended with insertion of word ‘Lahore Knowledge Park (Nawaz Sharif I.T City).’
5. Vide notification No.SOR-III(S&GAD) 2-17/83(P-I) dated 27-11-2024, amendments are made in the Punjab Judicial Service Rules, 1994.
6. Vide notification No.SO(H-I) Misc-6/20(P-IV) dated 06-12-2024, amendments are made in the Punjab Housing & Town-Planning Agency (Affordable Private Housing Schemes Rules) 2020.
7. Vide notification No.SOR-III(S&GAD)1-3/2002(PI) dated 17-12-2024, amendments are made in the Punjab Forestry and Wildlife (Wildlife Executive) Service Rules, 1978.
8. Vide notification No.SC(CAB-I)2-25/12(ROB) dated 20-12-2024, amendments are made in the Punjab Government Rules of Business, 2011.
9. Vide notification No.SOG/EP&CCD/5-1/2023 dated 20-12-2024, the description of uniform for the authorized officer is notified in the Punjab Environmental Protection (Motor Vehicles) Rules, 2013.

SELECTED ARTICLES

1. ASIAN JOURNAL OF LAW AND SOCIETY

<https://www.cambridge.org/core/journals/asian-journal-of-law-and-society/article/abs/in-response-to-constitutional-crisis-the-latent-carl-schmitt-in-zhang-junmais-political-thought/B5F983F1D0C97841023B42AA61F7E068>

In Response to Constitutional Crisis: The Latent Carl Schmitt in Zhang Junmai’s Political Thought by Dandan Chen

This paper examines two responses to the global constitutional crises in the twentieth century, with a focus on a comparison between Carl Schmitt, a notorious German political theorist and critic of liberal constitutionalism and Zhang Junmai, a constitutionalist in Republican China. After the First World War, both Germany and China experienced constitutional crises, which prompted critical reflections among

intellectuals. My paper is the first to discover and examine the latent element of Carl Schmitt in Zhang Junmai's acceptance of the Weimar Constitution. My research shows that Zhang's 1930 article, "Hugo Preuss (Author of the New German Constitution), His Concept of the State and His Position in the History of German Political Theory" (德國新憲起草者柏呂斯之國家觀念及其在德國政治學說史上之地位) is his Chinese translation of Carl Schmitt's 1930 article, "Hugo Preuss: His Concept of the State and His Position in German State Theory" ("Hugo Preuss: Sein Staatsbegriff und seine Stellung in der deutschen Staatslehre"). Instead of simply regarding Zhang's writing as plagiarism, my paper interrogates the gaps between Carl Schmitt's original text and Zhang's translation. By examining the intertextual relation between Carl Schmitt and Zhang Junmai, this paper reveals a latent aspect of the spectrum of Constitutionalism in the twentieth century and shows a special dialogue between a German critic of constitutionalism and a Chinese constitutionalist.

2. ASIAN JOURNAL OF LAW AND SOCIETY

<https://www.cambridge.org/core/journals/asian-journal-of-law-and-society/article/paper-in-the-age-of-the-digital-the-curious-case-of-65b-certificates-in-india/B4CFA2448482C029AB59B10EBC2A0730>

Paper in the Age of the Digital: The Curious Case of 65-B Certificates in India by Shikhar Goel

Law enforcement institutions in India are undergoing fundamental media technological transformations, integrating digital media technologies into crime investigation, documentation, and presentation methods. This article seeks to understand these transformations by examining the curious case of 65-B certificates, a mandatory paper document that gatekeeps and governs the life of new media objects as evidence in the Indian legal system. In exploring the tensions that arise when bureaucratic institutions change their means of information production, the article reflects on the continued stubborn presence of paper at this transformative juncture in the life of legal institutions. By studying the role of paper in bureaucratic practices, analyzing jurisprudential debates and case law surrounding 65-B certificates, and thinking through some scattered ethnographic encounters around these certificates involving police officers, forensic scientists, and practicing lawyers, this article argues that despite ongoing digital transformations, law essentially remains a technology of paper.

3. MANUPATRA

<https://articles.manupatra.com/article-details/SECTION-377-IPC-A-COMPREHENSIVE-ANALYSIS-OF-THE-CRIMINALIZATION-OF-HOMOSEXUALITY-ITS-LEGAL-EVOLUTION-JUDICIAL-RULINGS-AND-THE-NEED-FOR-INCLUSION-IN-THE-BNS>

Section 377 IPC: A Comprehensive Analysis of The Criminalization of Homosexuality, Its Legal Evolution, Judicial Rulings, And the Need for Inclusion in The Bns. By Akhil Kumar K.S.

Homosexuality or same-sex relationships are not new to the world, from ancient times, it has been an accepted practice in various civilizations and cultures. The term “unnatural” which was associated with homosexuality by the Indian Penal Code was flawed by the logic that it has always existed in different societies and was not considered against nature. Same-sex relationships were common in ancient Greece; various artworks and stories depicted it. Indian text Kamasutra also mentions that lesbians were called “Swarinis,” who often married each other and raised children together.¹ One of the visual examples is carved on the walls of Khajuraho Temple in Madhya Pradesh, known for its overt erotic sculptures showcasing the existence of sexual fluidity between homosexuals.² Prominent rulers of history such as Alexander, Babur, and Alauddin Khilji were known to have engaged in homosexual relationships and the fact that they did not face any disapproval highlights that it was not considered unnatural.

4. LAWYERS CLUB INDIA

<https://www.lawyersclubindia.com/articles/what-are-the-laws-that-govern-stock-markets-in-india--17315.asp>

What are the laws that govern stock markets in India? By Sankalp Tiwari

For any business looking to grow and have easy access to public funds, an initial public offering is a big financial event. An IPO procedure makes it possible to issue shares to the general public for the first time, giving investors the opportunity to invest in a previously private firm. In India, the process of an IPO has become very popular since companies seek growth capital in financing expansion, product development, and market penetration. The growth in the Indian economy and increasing middle class are the factors behind the spurt in IPOs. The routes through which Indian technology, pharmaceutical, and manufacturing companies now regularly take to the IPO market are highly regulated in India due to the presence of the regulator, SEBI, or the Securities and Exchange Board of India. It controls such activities in the best interest of fairness, transparency, and protection for the investors. Thus, through this process, a company raises funds and promotes the visibility of companies by providing recognition and credibility to a company. There are multiple stages in the process of the IPO in India: regulatory approval, price determination, public offering, and listing at stock exchanges. It is subject to a very strict legal framework requiring full disclosure of financial and operational details of the offering company. The initiation stage of an IPO is quite critical where the companies and advisors evaluate the conditions of the market and decide upon the best possible time to issue shares. Even the price quoted and numbers of shares offered are very judiciously selected in order to increase the chance of the IPO.

5. LAWYERS CLUB INDIA

<https://www.lawyersclubindia.com/articles/tom-cruise-receives-usa-navy-award-10-most-coveted-awards-of-the-us-and-the-rules-and-laws-that-govern-them-17299.asp>

Tom Cruise Receives USA Navy Award: 10 Most Coveted Awards of the US and the Rules and Laws That Govern Them by Navaneeth E M

Awards, whether in the arts, sciences, public service, or even national security, are vital because they honour those who've made exceptional contributions to society. These are more than just accolades; they act as reminders of the values a nation holds dear and symbolize appreciation. In the United States, for example, awards like the Medal of Honor and the Presidential Medal of Freedom highlight acts of bravery or service that inspire others and bring a sense of unity to society. To ensure fairness, there are rules and regulations—laws, really—that govern how these awards are given, especially when it comes to distinguishing between civilian and military honors. Military awards, such as the Medal of Honor, require a rigorous review process to confirm the merit of nominees. Civilian awards, on the other hand, have their own set of criteria for nominations and eligibility. This all ensures transparency and equity. Beyond the symbolism of achievement, these awards set a standard, a kind of bar for excellence, that pushes others to aspire for greatness too. The recent recognition of actor 'Tom Cruise' with the 'U.S. Navy's Distinguished Public Service Award' highlights the importance of these honours. Tom Cruise, who acted as a naval aviator in Top Gun, has improved the public awareness of the Navy and its core values. This award not only acknowledges Cruise's impact but also shows how such recognitions can strengthen the bond between the citizens and the military. In an era where public trust is important, awards which are governed by clear guidelines ensure that they remain symbols of integrity.
