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FORTNIGHTLY CASE LAW BULLETIN

(01-02-2025 to 15-02-2025)

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

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1. Supreme Court of Pakistan
Muhammad Saeed v. The State thr. A.G. Islamabad and another
Crl.P.L.A.588/2024
Mr. Justice Yahya Afridi Chief Justice, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/crl.p. 588 2024.pdf

Facts: The complainant’s sons were allegedly intercepted by the accused while on their way home. The accused, armed with a pistol, hurled abuses and fired at them with the intention to kill, injuring one of them in the leg. The complainant sought leave to appeal against the grant of pre-arrest bail to the accused.

Issues: i) Whether mala fide must always be proved through direct evidence for the grant of pre-arrest bail?
 ii) Whether the High Court was precluded from entertaining a fresh bail petition after the Sessions Court found the second bail petition to be not competent?

Analysis: i) As regards the contention that mala fide was not properly considered, it is important to note that mala fide cannot always be proved through direct evidence and is often to be inferred from the facts and circumstances of the case.
 ii) The argument that the High Court ought not to have entertained the bail petition after the Sessions Court found the second bail petition to be not competent is misconceived, as it neither precluded the respondent accused from filing a fresh bail petition before a higher forum nor barred the High Court from independently assessing the case and granting relief where warranted.

Conclusion: i) Mala fide does not always require direct evidence and can be inferred from the facts and circumstances of the case.
 ii) The High Court was not barred from entertaining a fresh bail petition despite the Sessions Court’s ruling on the second bail petition’s incompetency.

2. Supreme Court of Pakistan
Syed Ali Hussain, etc. v. Senior Member/Member (Revenue) Board of Revenue Punjab, Lahore etc.
Constitutional Petition No. 2918-L of 2025
Constitutional Petition No. 3039-L of 2025
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Aqeel Ahmed Abbasi
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 2918 1 2015 310 12025.pdf

Facts: Petitioners, in both constitutional petitions, challenged acquisition and seeks restoration of the land acquired for the public purpose of setting up a Wastewater Treatment Plant (“WWTP”) to treat the contaminated wastewater flowing into the River Ravi.

Issues: (i) Whether land acquired three decades ago for a public purpose, which has not been fulfilled, can result in the land being restored to its original owners as per Rule 14 of the Punjab Land Acquisition Rules, 1983?

Analysis: (i) The land was acquired from private landowners with the promise to set up WWTP that has not materialized over three decades. WASA's inaction over these years represents a serious failure in upholding its commitment to both public welfare and private rights. The restriction on using the acquired land exclusively for the WWTP may be reconsidered. Given that the project footprint does not require acres of land, WASA may repurpose the remaining land for other climate adaptation initiatives such as afforestation, renewable energy projects (solar or wind farms), or sustainable agriculture to combat soil degradation and improve food security. By diversifying adaptation projects in the same area, WASA not only maximizes land use but also strengthens resilience against climate change. Considering the importance of WWTP and its bearing on fundamental rights of the people, WASA may want to reconsider its financial and technological options while pursuing its negotiations with AFD. Let the PDWP through its Chair, Chairman Planning and Development Punjab, Civil Secretariat Lahore, CDWP through its Chair, Deputy Chairman Planning Commission, Pakistan Secretariat, Constitution Avenue Islamabad and ECNEC, Cabinet Block, Cabinet Secretariat, Red Zone Islamabad conclude the matter latest by end of August 2025.

Conclusion: i) See above analysis No 1.

3. Supreme Court of Pakistan
Muhammad Asif v. Amjad Iqbal and others
C.P. No.3151/2021
Mr. Justice Amin-ud-Din Khan, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 3151 2021.pdf

Facts: The petitioner/defendant assailed the order of the Hon'ble High Court which dismissed his revision to the effect of decree of suit of respondent/plaintiff by the courts below respectively.

Issues: i) On whom the burden of proof lies, when the validity of a transaction and instrument of transfer is challenged based on undue influence?
 ii) Who would be burdened to proof, when there is no denial of signatures and appearance at the time of attestation of mutation but because of pressure and fear?

Analysis: i) It is not an ordinary case where a person having influence upon the vendor/transferor got the mutation attested as we ordinarily see in most of the litigation in our country where a person having undue influence over the vendor/transferor gets the mutation attested by using undue influence like a son gets property through gift or sale from his aged and ailing father/mother or a brother from his sister, or a husband from his wife. There are many more instances like this. In that eventuality, the law developed and pronounced by this Court is that when a person challenges the validity of the transaction and instrument of transfer, it may be a registered document or a mutation. The filing of suit and after that making a statement before the Court on oath that he/she has not made the transaction and the instrument. in that eventuality, it is very clear

position of law that the onus to prove shifts and the beneficiary must prove the transaction as well as valid registration/attestation of document.

ii) A grown-up person having married and having a daughter pleads that he was abducted by the vendee who kept him 4/5 days and got the mutation attested and denied the transaction of sale in favour of the petitioner/vendee/defendant. In this case, it was the primary duty of plaintiff/respondent to prove the case pleaded by him.

Conclusion: i) The burden of proof lies on beneficiary, when the validity of a transaction and instrument of transfer is challenged based on undue influence.
ii) When there is no denial of signatures and appearance at the time of attestation of mutation but because of pressure and fear, the plaintiff must prove.

4. Supreme Court of Pakistan
Chairman, NADRA, NADRA Headquarter, Islamabad and others v. Abdul Majeed and another
Civil Petition No. 6059 of 2021
Mr. Justice Amin-ud-Din Khan, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 6059 2021.pdf

Facts: Respondent No.1 was appointed as a Naib Qasid in NADRA on a contract basis, and he joined his duty in March 2011. Later, a policy was introduced for the regularization of employees who had completed one year of service. However, the respondent was denied regularization due to a shortfall of three days in the required service period. Feeling aggrieved, he challenged this decision before the High Court, which ruled in his favor and directed his regularization. The petitioners have now filed this Civil Petition for leave to appeal against that judgment.

Issues: i) Whether a contractual employee of a statutory organization can invoke constitutional jurisdiction of the High Court under Article 199 of the Constitution of Pakistan, 1973?
ii) Do contractual employees have any vested right to regularization?
iii) What factors are to be considered for regularization?
iv) Whether contractual employees can claim regularization as a vested right without departmental approval, policy, or statutory backing?
v) What does Article 4 of the Constitution entail regarding the doctrine of equality before the law?
vi) Is legal protection and fair treatment an inalienable right of every citizen?
vii) Does Article 25 ensure equality before the law, non-discrimination, and equal opportunity without arbitrary distinctions?
viii) What does the Objectives Resolution, mandate regarding equality, social justice, and economic justice as fundamental rights?
ix). What does Article 38 of the Constitution mandate regarding people's well-being, equitable rights, and income disparity?"

- x) What obligation does Article 3 place on the State regarding exploitation and economic justice?
- xi) Should a disabled employee, serving satisfactorily on a contract for a considerable time, be regularized to ensure employment benefits?
- xii) What is disability-based discrimination, and how does it affect equal enjoyment of rights and freedoms?
- xiii) "How does Article 27 of United Nations Convention on the Rights of Persons with Disabilities, 2006 ("Convention") ensure equal employment rights and non-discrimination for persons with disabilities?"
- xiv) "What is the primary objective of the Disabled Persons (Employment & Rehabilitation) Ordinance, 1981?"
- xv) Does filing an ICA serve as a procedural rule without limiting the Supreme Court's constitutional jurisdiction?"

Analysis:

- i) The constitutional jurisdiction of the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") could not be invoked by a contractual employee of a statutory organization.
- ii) Contractual employees have no vested right to regularization.
- iii) Regularization may be considered subject to fitness, suitability, and the applicable laws, rules, and regulations of the concerned Department.
- iv) No vested right accrues to the employees hired on a contractual basis unless there is a departmental decision, policy, or statutory backing and protection, and no automatic right to regularization can be claimed.
- v) Article 4 of the Constitution incorporates the doctrine of equality before the law and equal protection under it, ensuring that no action detrimental to the life, liberty, body, reputation or property of any person can be taken except in accordance with the law.
- vi) To enjoy the protection of law and to be treated in accordance with law is an inalienable right of every citizen.
- vii) According to Article 25 of the Constitution, all citizens are equal before the law and are entitled to equal protection of the law, and there shall be no discrimination on the basis of sex. The phrase "equal laws" accentuates that there should be no discrimination between individuals in the context and perspective of law and policy if both are evidently on the same footing. The periphery of our constitutional code mandates equality and ensures equal opportunity among persons substantially within the same class, without arbitrary distinctions or preferences.
- viii) The Objectives Resolution, made a substantive part of the Constitution by virtue of Article 2-A, unequivocally enjoins that the principles of equality, social justice, and economic justice, as enunciated by Islam, will be fully observed and guaranteed as fundamental rights.
- ix) The Principles of Policy contained in Article 38 of the Constitution also provide that the State should secure the well-being of the people by raising their standards of living and by ensuring equitable adjustment of rights between

employer and employees, and provide for all citizens, within the available resources of the country, facilities for work and adequate livelihood, and reduce disparity in income and earnings of individuals.

x) The State is obliged under Article 3 of the Constitution, to ensure the elimination of all forms of exploitation and work towards the gradual fulfilment of the fundamental principle of “from each according to his ability, to each according to his work”.

xi) If a disabled person, initially appointed on a contractual basis, performs his duties for a considerable period of time to the satisfaction of his superiors/department, then proprietary demands that he should be regularized as a permanent employee so that he may reap all employment benefits, rather than being dragged on contractual basis perpetually

xii) Discrimination on the basis of disability means any distinction, exclusion, or restriction that impairs or nullifies the recognition, enjoyment, or exercise of all human rights and fundamental freedoms on an equal basis in the political, economic, social, cultural, civil, or any other field.

xiii) Article 27 of the Convention, which pertains to “Work and employment on an equal basis,” includes the right to gain a living through work freely chosen or accepted in a labour market and work environment that is open, inclusive, and accessible to persons with disabilities. It also prohibits the discrimination on the basis of disability in all matters concerning employment, including conditions of recruitment, hiring, continuance of employment, career advancement, and safe and healthy working conditions.

xiv) The foremost objective of the Ordinance 1981 is to protect and safeguard the overall interest of disabled persons, including provisions for employment commensurate with their capabilities and capacities to work.

xv) Filing an ICA is a rule of practice for regulating the procedure of the Court and does not oust or abridge the constitutional jurisdiction of this Court.

- Conclusion:**
- i) A contractual employee of a statutory organization cannot invoke constitutional jurisdiction of the High Court under Article 199 of the Constitution of Pakistan, 1973.
 - ii) Contractual employees have no vested right to regularization.
 - iii See above analysis No.iii.
 - iv) Contractual employees cannot claim a right to regularization without departmental approval, policy, or statutory backing.
 - v) Article 4 of the Constitution guarantees equality before the law and protects individuals from unlawful actions against their life, liberty, reputation, or property.
 - vi) Every citizen has an inalienable right to legal protection and fair treatment under the law.
 - vii) Article 25 guarantees equality before the law for all citizens, prohibits sex-based discrimination, and promotes equal opportunities within the same class.

- viii) The Objectives Resolution mandates the full observance of equality, social justice, and economic justice as fundamental rights in line with Islamic principles.
- ix) See above analysis No.ix.
- x) Article 3 obliges the State to eliminate exploitation and promote the principle of "from each according to his ability, to each according to his work."
- xi) See above analysis No.xi.
- xii) see above analysis No.xii.
- xiii) Article 27 of the Convention guarantees persons with disabilities the right to choose work in an inclusive environment and prohibits discrimination in all employment matters.
- xiv) The primary aim of the 1981 Ordinance is to protect the interests of disabled persons, ensuring employment opportunities that match their capabilities.
- xv) Filing an ICA is a procedural rule that does not limit the constitutional jurisdiction of Supreme Court.

5. Supreme Court of Pakistan

Muzammal Khan v. Inspector General of Police, Lahore and others

Mrs. Justice Ayesha A. Malik, Mr. Justice Malik Shahzad Ahmad Khan

https://www.supremecourt.gov.pk/downloads_judgements/c.p. 1354_2023.pdf

- Facts:** Petitioner challenged judgment of Service Tribunal through which order regarding his dismissal from service was upheld.
- Issues:**
- i) What is difference between “wilful absence” and “legitimate absence” from duty?
 - ii) When a Tribunal or Court can intervene in punishment awarded by competent authority?
 - iii) What is the test for determining jurisdiction under Article 212(3) of the Constitution of Islamic Republic of Pakistan?
- Analysis:**
- i) Willful absence is when a person intentionally fails to show up for duty and does not attempt to even inform the department/competent authority of the reasons for the absence. There may be different eventualities due to which a person is compelled to be absent from duty, being circumstances beyond his control like illness, accident, hospitalization, but even in such circumstances, they are required to inform the department and seek permission for their continued absence. One can’t disappear from work without any information or contact and then suddenly re-appear and suggest that this act was not deliberate. A legitimate absence is one where the reasons are known and duly communicated, whereas willful absence is when the absence lacks a reasonable explanation and cannot be justified
 - ii) The award of punishment under the law is primarily the function of the competent authority and the role of the Tribunal or Court is secondary unless the punishment imposed on the delinquent is found to be unreasonable and contrary to law. The Tribunal or the Court intervenes due to the severity or nature of the penalty imposed by the competent authority by considering it unreasonable,

perverse, excessively harsh, or by exercising leniency, then such interference is based on the conclusion that the penalty is disproportionate to the proven misconduct as determined through the test of proportionality. However, interference with the penalty imposed by the department must be approached with caution and careful consideration, reserved for cases where the order is entirely perverse or so clearly disproportionate and excessive to the misconduct that allowing it to stand would be unfair, unjust, and inequitable.

iii) The test for determining whether a matter attracts the Article 212(3) jurisdiction of this Court is whether such matter qualifies as one of public importance. This means that it must extend beyond a private dispute or a purely factual controversy and have significant implications for the wider community or a class of civil servants. A legal issue may, therefore, qualify as a substantial question of law of public importance if it; (i) requires the interpretation of the law, rules, instructions, notifications or governmental policy; (ii) remains unresolved by this Court or is subject to ambiguity, conflicting interpretations, or requires a discussion of alternative perspectives; (iii) exposes a lack of clarity in the law, particularly where contradictory judicial precedents exist; or (iv) reveals a serious violation of due process that affects fundamental rights or procedural fairness under the Constitution.

Conclusion: i) See above analysis (i)
ii) See above analysis (ii)
iii) See above analysis (iii)

6. Supreme Court of Pakistan
Muhammad Shakeel and others v. Additional District Judge, Faisalabad and others
C.P.L.A.4582/2023
Mr. Justice Yahya Afridi, CJ & Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 4582_2023.pdf

Facts: The Family Court decreed the suit of respondent No.3 (Plaintiff) and ordered the petitioners/defendants (brothers of plaintiff's husband) to return the dowry articles except certain items, or to provide an alternative equivalent in value after a 40% depreciation deduction. The decree maintained till the High Court. Hence this Petition.

Issues: i) What is proper stage to take a plea of non-joinder of necessary party?
ii) Whether in family cases a party, other than the spouses, can be impleaded?
iii) Whether nature of jurisdiction of family court is inquisitorial or adversarial?
iv) Who can invoke the jurisdiction of family court?
v) On what touchstone a precedent/Judgment can be applicable in future cases?
vi) While exercising the constitutional jurisdiction whether High court can scrutinize the decrees issued by lower courts in family matters?
vii) In what circumstances an order of certiorari can be passed by superior court?

viii) What kind of issues comes exclusively in the purview of Family Court and the First Appellate Court?

Analysis:

i) The legal principle at play here dictates that a plea of non-joinder must be articulated at the earliest possible moment in the proceedings, and the party raising such a plea is required to specifically identify the person or party purportedly omitted from the proceedings. If an objection regarding non-joinder is not presented promptly, it is considered to have been waived, thereby losing its merit.

ii) To ensure the presence of the real defendant, power is also given to the Family Court to add such a person as a party to the dispute. This definition is liberal and extensive and is not confined only to spouses; rather, it gives a right and the prerogative to choose and implead in a suit as the defendant, the person against whom relief is sought.

iii) The jurisdiction of the Family Court is inquisitional in nature.--- The procedural framework established for the Family Court is notably inquisitional rather than adversarial.

iv) As such, it follows that any person demonstrating a legitimate interest in seeking legal remedies pertinent to the matters numerated in the schedule of the Family Courts Act of 1964 is entitled to invoke the jurisdiction of the Family Court. This inclusivity also encompasses any person against whom a cause of action regarding such disputes is alleged to exist and who is called upon to defend it.

v) It is imperative to understand that a legal case holds authority solely concerning the specific issues it addresses and the conclusions it reaches. A judgment cannot be generalised beyond its context, as it is only applicable to the situation at hand and does not serve as a precedent for matters that lie outside its explicit scope. This principle underscores the limited applicability of judgments and reinforces the need for careful analysis when considering their implications in future cases.

vi) It is important to note that even after the litigation concerning family disputes concludes at the appeal stage, the High Court retains the authority, under Article 199 of the Constitution, to scrutinise the decrees issued by lower courts.--- This supervisory role imposes clear limitations: specifically, it prohibits the High Court from reevaluating or questioning factual findings made by subordinate courts based on their assessment of evidence. The High Court does not engage in reviewing or reweighing evidence that underlies the decisions made by the Family Court or its First Appellate Court

vii) A certiorari order is applicable when a Family Court or First Appellate Court acts in an illegal or improper manner while exercising its jurisdiction.--- Furthermore, certiorari orders can be granted solely when a clear error of law is evident on the face of the record; however, this does not extend to addressing errors of fact, regardless of their severity.

viii) Issues pertaining to the sufficiency or adequacy of evidence presented on specific points and the factual inferences drawn from such findings are relegated exclusively to the purview of the Family Court or its First Appellate Court.

- Conclusion:**
- i) The plea of non-joinder should be taken at earliest possible moment.
 - ii) A party in family cases, other than the spouses, can also be impleaded.
 - iii) The jurisdiction of family court is inquisitional in nature.
 - iv) Any person who has interest in seeking legal remedies can invoke jurisdiction of Family Court.
 - v) See above analysis No.v
 - vi) See above analysis No.vi
 - vii) See above analysis No.vii
 - viii) See above analysis No.viii

7. Supreme Court of Pakistan
Abdul Samad v. The State etc.
Criminal Petition No.972-L/2017
Mr. Justice Athar Minallah, Mr. Justice Irfan Saadat Khan, Mr. Justice Malik Shahzad Ahmad Khan
https://www.supremecourt.gov.pk/downloads_judgements/crl.p.972_1_2017.pdf

Facts: Through this Criminal Petition, the petitioner has challenged the judgment of the High Court, whereby the petitioner's appeal against the conviction and sentence awarded to him by the Anti-Terrorism Court, was dismissed by the High Court.

Issues

- i) What is most important aspect, which has not been taken into consideration?
- ii) Whether the benefit of doubt accrues in favour of accused as matter of right or as a matter of grace?

Analysis:

- i) The most important aspect, which has perhaps has not been taken into consideration by the Trial Court as well as the High Court, is that the items allegedly recovered from the accused on 02.09.2014 happens to be of the same description as those mentioned in the newspaper dated 21.07.2014. It is quite strange that the prosecution has failed to mention the registration number of the vehicle from which the accused/ petitioner was arrested. Moreover, they did not associate the driver, conductor, or any one of the passengers of the said bus — nor did they even mention their names in the FIR. Even the detonators were sent for analysis after two days of their alleged recovery at the time of arrest as per the FIR, casting doubt on the prosecution's case.
- ii) It is settled law that where there is even a single circumstance which would create a reasonable doubt in a prudent mind about the accused's guilt, then the benefit of that doubt that would firstly accrue, as of right, in the accused's favour; and secondly, such single factor could be conclusive and form the basis of acquittal. The following paragraph from this Court's judgment in Tariq Parvez's¹ case is relevant:

"The concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right."

Muhammad Akram's² case further reiterates the principle of Tariq Parvez (supra) in the following terms:

"It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace."

Conclusion: i) See above analysis No.i
ii) in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace.

8. Supreme Court of Pakistan
Muhammad Nasir Butt etc. v. The State etc.
Jail Petitions No.314 & 315/2017 and Cri.P.L.A.576-L/2017
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Musarrat Hilali, Mr. Justice Naeem Akhter Afghan.
https://www.supremecourt.gov.pk/downloads_judgements/j.p. 314_2017.pdf

Facts: The petitioners were convicted for murder and related offenses. The trial court awarded one petitioner the death penalty under Section 302(b) of the Pakistan Penal Code (PPC), while another was sentenced to life imprisonment. The Lahore High Court upheld the convictions but converted the death sentence to life imprisonment. The petitioners challenged their convictions before the Supreme Court, while the complainant sought enhancement of the sentence.

Issues: i) What is the effect of dishonest improvements in statements of witnesses?
ii) Whether inconsistencies between the complainant's statement and the site plan undermined the prosecution's case?
iii) Whether lack of independent corroboration for the weapon's recovery rendered such recovery unreliable?
iv) Whether the prosecution's failure to produce the injured passer-by witness weakens its case?

Analysis: i) In their statements recorded at the trial, the complainant and injured have made dishonest improvements for assigning specific role to each accused, which creates serious doubt about the veracity of their testimony and it is not safe to place reliance on their statements. Reliance in this regard is placed on the case of "Muhammad Jahangir v. The State.

ii) The statement of the complainant is also suffering from material contradictions with regard to the standing position of both the injured as compared to the site plan and statements of the other witnesses due to which serious doubt has arisen about the presence of the complainant at the place of occurrence as well as about veracity of his statement.

iii) Due to non-association of any private witness of the locality to attest the recovery of alleged weapon of offence/lack of independent corroboration, the same is disbelieved. Reliance in this regard is placed on the case of 'Muhamamd Ismail v. The State'.

iv) At the trial, the prosecution has not produced the injured passer-by Shehbaz and Abdul Jabbar who was mentioned to be an eye-witness of the occurrence by the complainant. An adverse inference is drawn under Article 129(g) of the Qanun-e-Shahadat Order, 1984 to the effect that had the above two witnesses been produced by the prosecution at the trial, they would not have supported the version of the prosecution.

- Conclusion:**
- i) Dishonest improvements creates serious doubt about the veracity of their testimony.
 - ii) See above analysis No ii.
 - iii) See above analysis No iii.
 - iv) Non production of the injured passer-by witness creates an adverse inference under Article 129(g) of the Qanun-e-Shahadat Order, 1984.

9. Supreme Court of Pakistan
Hashim Khan and others v. Mst. Musarat Begum and others
C.P.L.A.No.625-P of 2024
Mr. Justice Irfan Saadat Khan, Mr. Justice Shahid Bilal Hassan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._625_p_2024.pdf

Facts: The predecessor of the petitioner instituted a civil suit for declaration against the respondents, leading to ex parte proceedings. After recording ex parte evidence, an ex parte decree was issued. Respondents No. 1 to 3 then applied to set aside the ex parte judgment and decree, which the trial court accepted. The petitioners, dissatisfied, filed a revision petition with the Additional District Judge, but it was summarily dismissed. Subsequently, the petitioners filed a writ petition in the High Court, which was partially granted. Dissatisfied with the High Court's judgment, the petitioner has now filed the current petition.

Issues:

- i) What are the mandatory requirements for effecting substituted service?
- ii) What factors court should observe while taking up application seeking setting aside ex parte judgment and decree?

Analysis: i) Substituted service can only be effected when ordinary summons cannot be served or defendant deliberately avoids to receive summons of the Court and the Court is satisfied that service could not be effected through ordinary modes of service and that satisfaction can be achieved by recording statement of the process

server but as stated above nothing as such was undergone by the learned trial Court.

ii) The trial Court seized of the matter, while taking up application seeking setting aside ex parte judgment and decree, was right in observing that the process of issuance of proclamation without fulfilling the mandatory requirement is nullity in the eye of law; therefore, the superstructure built thereon would automatically collapse. Even, it is settled principle of law as well as demand and mandate of law that one should not be condemned unheard and every litigant(s) should be provided with fair opportunity to plead and defend his/her case by adhering to the principle of Audi Alteram Partem and technicalities should and ought to be avoided.

Conclusion: i) See above analysis No.i
 ii) Mandatory requirements should be fulfilled before process of issuance of proclamation, no one should be condemned unheard, every litigant(s) should be provided with fair opportunity to plead and defend his/her case and technicalities should and ought to be avoided.

10. Lahore High Court
Syed Hassan Murtaza v. Mariya Bano Khan and other.
Writ Petition No.78185/2023
Mr. Justice Tariq Saleem Sheikh
<https://sys.lhc.gov.pk/appjudgments/2024LHC6486.pdf>

Facts: The petitioner and respondent No.1 (mother) are Pakistani citizens who married and had three sons. The family resided in the UAE until 2020, after which they moved to Canada as permanent residents. In the year 2021, respondent No.1 allegedly abducted the children and brought them to Pakistan violating Ontario Court order. Petitioner invoked the constitutional jurisdiction of the High Court through this Petition and sought the recovery of the children alleging that respondent No.1 obtained the Guardianship Certificate and then permission to take the children abroad from the Family Court despite the fact that the children were in Canada.

Issues: i) Which is the core provision of the U.N. Convention on the Rights of the Child (CRC) and what does it obligate the States?
 ii) What are the dimensions of the concept of “best interests of the child” in light of General Comment No.14 (2013) and what do they have repercussions?
 iii) Under what circumstances can the High Court exercise its habeas corpus jurisdiction under Article 199 of the Constitution in matters involving the custody of minors?
 iv) What is the legal effect of a foreign custody order on custody proceedings in Pakistan?
 v) How does the welfare of the child’s principle under the Guardian and Wards Act, 1890, influence the court’s decision on interim and permanent custody?

- vi) What is the scope and limitation of the doctrine of election of remedies in custody disputes involving parallel proceedings before the Family Court and the High Court?
- vii) How does the non-enforceability of the Hague Convention between Pakistan and certain countries affect the adjudication of international child abduction cases?
- viii) To what extent can the High Court direct law enforcement agencies to recover minors in custody-related matters under its constitutional jurisdiction?
- ix) What is the significance of the concept of habitual residence in determining the jurisdiction and custody rights in international child abduction cases?

Analysis:

- i) The U.N. Convention on the Rights of the Child (CRC) is the most comprehensive international instrument safeguarding children’s rights across all facets of their lives. At its core lies Article 3, which asserts that the best interests of the child must be the paramount consideration in all matters concerning them. This provision obligates States to ensure the protection and well-being of children under all circumstances, serving as a fundamental principle guiding policy and practice globally.
- ii) In General Comment No.14 (2013), the Committee on the Rights of the Child (the “CRC Committee”) has stated that the concept of “best interests of the child” has three dimensions: (a) a substantive right, (b) a fundamental interpretative legal principle, and (c) a rule of procedure. The “substantive right” entitles the child to have their best interests assessed and prioritized whenever decisions affecting them are made. This right imposes an inherent obligation on States to ensure its implementation, which can be invoked directly before a court. As a “fundamental interpretative legal principle”, the concept mandates that if a legal provision is open to more than one interpretation, the construction which most effectively serves the child’s best interests should be chosen, guided by the rights enshrined in the Convention and its Optional Protocols. As a “rule of procedure”, it requires that whenever a decision is to be made that will affect a specific child, an identified group of children, or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child requires procedural guarantees.
- iii) The Supreme Court of Pakistan has consistently maintained that the High Court’s jurisdiction under Article 199(1)(b)(i) of the Constitution (and section 491 Cr.P.C.) should be sparingly invoked for the custody of minor children and only under specific circumstances. In *Nadia Perveen v. Almas Noreen and others* (PLD 2012 SC 758), the Supreme Court ruled that the High Court may entertain matters related to the custody of minor children while exercising its habeas corpus jurisdiction if the following conditions are met. Firstly, the children involved must be of very tender age. Secondly, they should have quite recently been snatched away from lawful custody. Lastly, there must be a real urgency in the matter. The Supreme Court further stated that even if these conditions are fulfilled, the High

Court may only regulate interim custody of the children, leaving the matter of final custody to be determined by the Family Court. It highlighted that the Family Court has ample powers to recover minor children and regulate their interim custody.

iv) In *McKee v. McKee*, [1951] AC 352, has had a lasting impact on the development of family law, especially in international disputes involving child custody (...) the Privy Council ruled that the order of a foreign court would yield to the welfare and happiness of the child. The comity of the courts demanded not its enforcement but its grave consideration. Even before Pakistan acceded to the Hague Convention, the country's courts consistently held that the decisions of foreign courts did not, by their own force, bar the filing of the application for the custody of minors, particularly when circumstances changed. A foreign court's order was one of the factors to be considered by the Family Court, but it was not conclusive of the controversy.

v) As adumbrated, the overarching principle in cases involving the question of custody is the determination of the welfare of the child, as enshrined in section 17 of the GWA. This provision explicitly directs courts to prioritize the child's well-being in accordance with relevant laws. Section 17(3) allows courts to consider the preferences of mature minors.

vi) The High Court's jurisdiction under Article 199(1)(b)(i) of the Constitution (and under section 491 Cr.P.C.) and the jurisdiction of the Family Court under the GWA are fundamentally distinct and serve different purposes (...) Given the above, the High Court's jurisdiction to issue a writ of habeas corpus is not affected by the pendency of the guardianship matter before a Family Court.

vii) Article 38 of the Hague Convention stipulates that any State may accede to the Convention. However, the accession will have effect only as regards the relations between the acceding State and those Contracting States that have accepted the accession (...) When a country accedes to the Convention, it does not automatically form a partnership with all the countries that have ratified or acceded to it. Instead, countries must accept another country's accession to the Convention according to the conditions described in the Convention before a binding treaty comes into being (...) Pakistan and Canada are both signatories to the Hague Convention. However, they have yet to reciprocally acknowledge each other's accession. Consequently, the Convention is not enforceable between them (...) Therefore, courts in Pakistan must differentiate between Convention and non-Convention cases when dealing with international child abduction cases.

viii) A writ of habeas corpus is not to be issued as a matter of course, particularly when it is sought against a parent for the custody of a child. There must be clear and compelling reasons for issuing such a writ. The Supreme Court criticized the tendency of High Courts to unhesitatingly involve law enforcement agencies in family matters, particularly when there is no criminal element involved and the child is under the lawful custody of a parent. The Supreme Court noted that such actions could cause unnecessary trauma and harassment to the affected parent, especially if the parent is the biological mother. Therefore, the High Court should

proceed with great care, caution, and restraint. It may exercise its constitutional jurisdiction only in exceptional circumstances, where all other measures have failed, and criminal actions such as forced removal, kidnapping, or abduction of the child are apparent.

ix) The determination of habitual residence is crucial in cases involving international child abduction because, as discussed above, it has a direct link with the question of child's welfare. Hence, it has been the subject of extensive judicial interpretation (...) According to Article 4, the Convention applies to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights (...) The underlying principle is that the most appropriate jurisdiction for custody disputes is typically the child's habitual residence before the abduction. This ensures that long-term decisions regarding their upbringing are made in the environment most familiar to them and by a court having access to the most relevant information.

- Conclusion:**
- i) The U.N. Convention on the Rights of the Child (CRC) obligates States to ensure the protection and well-being of children under all circumstances, serving as a fundamental principle guiding policy and practice globally
 - ii) There are three dimensions of the concept of the best interests of the child in General Comment No.14 (2013) and those are (a) a substantive right, (b) a fundamental interpretative legal principle, and (c) a rule of procedure.
 - iii) The High Court's habeas corpus jurisdiction under Article 199 should only be exercised in exceptional circumstances, primarily for interim custody, while final custody remains within the Family Court's domain.
 - iv) Foreign custody orders are not binding but are entitled to due consideration by Pakistani courts, with the child's welfare being the paramount consideration.
 - v) The welfare of the child is the overriding principle under section 17 of the Guardian and Wards Act, 1890, guiding both interim and permanent custody decisions.
 - vi) The High Court's constitutional jurisdiction and the Family Court's jurisdiction under the Guardian and Wards Act are distinct and can operate concurrently without excluding one another.
 - vii) The Hague Convention is not enforceable between Pakistan and Canada due to the lack of reciprocal acceptance, requiring Pakistani courts to treat such cases as non-Convention matters.
 - viii) The High Court must exercise great caution in custody-related habeas corpus petitions, intervening only in cases involving exceptional circumstances such as criminal conduct.
 - ix) Habitual residence is a significant factor in international child abduction cases, but it can be displaced by the need to protect the child from serious harm...
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11. Lahore High Court
Kakakhail Traders v. Province of Punjab and others
Writ Petition No.3661 of 2024
Mr. Justice Jawad Hassan
<https://sys.lhc.gov.pk/appjudgments/2025LHC183.pdf>

Facts: The petitioners, along with other bidders, participated in the pre-qualification process for the procurement of livestock under the "Livestock Asset Transfer to Rural Women in South Punjab" scheme for the financial year 2024-2025. Out of nine firms, only two secured the required 70% qualifying marks. The petitioners challenged their disqualification, alleging violations of the Punjab Procurement Rules, 2014, due to the issuance of a corrigendum that altered evaluation criteria. Whereas the respondents objected that the petitioners failed to meet the qualification criteria and did not exhaust alternative remedies before filing the petition.

Issues:

- i) Whether assumption of jurisdiction is a prerequisite for a court before adjudicating on the merits of a case?
- ii) Whether the allocation of cases to High Court Benches is regulated by predefined territorial limits and procedural rules?
- iii) Whether a High Court Bench can assume jurisdiction solely based on the petitioner's addresses, despite the cause of action arising elsewhere?
- iv) Whether a court can exercise jurisdiction or grant relief beyond the specific matters explicitly raised in the petition?

Analysis:

- i) The Supreme Court of Pakistan in its Judgment reported as "Government Of Sindh Through Secretary Education And Literacy Department And Others Versus Nizakat Ali And Others" (2011 SCMR 592) has held that every Court prior to taking cognizance and adjudicating upon an issue should first resort to the question of assumption of jurisdiction of the Court and if it comes to the conclusion that jurisdiction can be assumed only then it can adjudicate upon the issue.
- ii) In terms of Article 198(3) of the Constitution of Islamic Republic of Pakistan, 1973, Bahawalpur, Multan and Rawalpindi Benches of the Lahore High Court are constitutionally constituted Benches with the area assigned to them under Article 198(6) of the "Constitution". This exercise is undertaken in accordance with the Lahore High Court (Establishment of Benches) Rules 1981, Rule 3 whereof regulates the distribution of matters to be filed and heard by each Bench within the area assigned to it respectively.
- iii) The matter could not be entertained at the Rawalpindi Bench of the Lahore High Court merely because of addresses of the Petitioners at Rawalpindi and Islamabad. Since the subject matter of the titled petitions relates to the "Scheme" for South Punjab and all related ancillary activities in respect of procurement in question was also carried out by the Livestock Department of South Punjab; hence, these petitions cannot be adjudicated at Rawalpindi Bench of Lahore High Court.

iv) It is observed that these petitions were filed with a vague and unclear prayer. As mandated by Article 199(1)(1A) of the “Constitution”, introduced through Section 16 of the Constitution (Twenty-sixth Amendment) Act (the “Twenty-sixth Amendment”) on 21.10.2024, this Court cannot exercise jurisdiction or issue directives beyond the matters explicitly raised in these petitions.

Conclusion: i) Court prior to taking cognizance and adjudicating upon an issue should first resort to the question of assumption of jurisdiction.
 ii) See above analysis No ii
 iii) See above analysis No iii.
 iv) Court cannot exercise jurisdiction or issue directives beyond the matters explicitly raised in these petitions.

12. Lahore High Court
Muhammad Khalid Waseem v. Govt. of Punjab, etc.
Writ Petition No.72110 of 2024.
Mr. Justice Muhammad Amjad Rafiq
<https://sys.lhc.gov.pk/appjudgments/2025LHC161.pdf>

Facts: The petitioner challenged the reference sent by office of the Registrar, Cooperative Societies, Punjab, transferring a case to the Anti-Corruption Establishment instead of conducting proceedings as directed by the NAB Court. The petitioner contended that the Registrar lacked such authority and that the case should be adjudicated under the provisions of the Cooperative Societies Act, 1925.

Issues: i) What is the procedure for inquiry and prosecution under the Cooperative Societies Act, 1925?
 ii) What are the offences and penalties prescribed under the Cooperative Societies Act, 1925?
 iii) Are offences under the Cooperative Societies Act, 1925, liable to a ‘penalty’ by the Registrar or ‘punishable’ by the court?
 iv) Is cognizance of offences under the Cooperative Societies Act, 1925, dependent on a complaint by the Registrar?
 v) Are officers of a cooperative society considered public servants, and what are the categories of Public Servants?
 vi) What is the appropriate judicial forum for trying offences under the Cooperative Societies Act, 1925?
 vii) Did the Registrar, Cooperative Societies, Punjab, have the authority to refer the case to the Anti-Corruption Establishment?

Analysis: i) On receiving a complaint, the Registrar, Cooperative Societies, can inquire into matters for appropriate actions under the law or for prosecution of offences. The course of complaint is mentioned in section 43 of the Cooperative Societies Act 1925. During such inquiry, Registrar while exercising powers under section 44, 44A, 44B can inspect books and properties of the society and recommend other

actions including removal of officers of society under section 44C, appropriate directions to Society under section 44D or taking of special measures under section 44E(...) such an exhaustive mechanism, which authorizes the Registrar to take down the entire society and protect and preserve the rights of claimants, is enough to achieve the necessary objectives, the Grievance Redressal provision in section 44F acts as a safeguard against the Registrar's powers that can be used arbitrarily. Even the Registrar has the power to order society to wind up, and then appointment of liquidator as authorized under section 47 to 53 of CSA 1925. A solution through arbitration pursuant to section 54 and onward is also in place in the CSA 1925.

ii) Above penal provisions reflect that maximum punishment is prescribed as five years' imprisonment with fine for offence under clause (i) of section 60, as ordained under section 61A of CSA 1925 (...) As per section 62A, penalty to imprisonment of six months with fine for contravening the provisions of sub-section 3 of section 44C or violation of any direction given by the Registrar under section 44-D; imprisonment to three years (not less than six months) with fine on contravention of order passed under section 44E, have been prescribed in CSA 1925. No punishment or penalty has been prescribed for offences under Clauses (a) to (h) of section 60 of CSA 1925, and it is mentioned in section 61 above that every officer or member of a society or other person guilty of an offence under this Act for which no penalty is expressly provided in this Act shall be liable to a penalty not exceeding rupees one million. Similarly, every society guilty of an offence under this Act for which no penalty is expressly provided shall be liable to a penalty not exceeding rupees ten million. Section 61, sub-section (2) says that the Registrar or a person duly authorized by him shall be empowered to impose such penalty after affording an opportunity of hearing to the concerned. As per section 62, sub-section (2), whoever contravenes the provisions of such section, shall be punishable with fine which may extend to fifty thousand rupees and in the case of a continuing offence with further fine of five hundred rupees for each day on which the offence is continued after conviction therefor.

iii) Analysis of above penal provisions reflects that the offences under above Act are either liable to 'penalty' or 'punishable'; the two terms differ to each other in the sense that power of imposing penalty has been given to the Registrar or person authorized by him under the Act, whereas power to punish lies with the Court. Offences under section 60, clauses (a) to (h) are liable to 'penalty' only, whereas offences under sections 60, Clause (i), as well as under sections 62 & 62A are 'punishable'.

iv) As per section 63 of CSA 1925, cognizance of all offences punishable under the Act is subject to the complaint in writing to be made by the Registrar or by a person duly authorized by him for the purpose. However, for offences under section 62A, sub-section (2), cognizance was also kept open otherwise than on complaint by Registrar.

v) Section 65B of the Cooperative Societies Act, 1925, declares officers of a cooperative society as public servants as defined under Section 21 of the Pakistan

Penal Code, 1860. Officers include Chairman, Secretary, Treasurer, member of committee or other person empowered under the rules or under the by-laws of a society to give directions in regard to the business of such society, as defined under section 3(d) of the Act (...) I have focused on the definition of public servant defined in section 21 of Pakistan Penal Code 1860 which counts eleven broad categories including numerous other categories such as “every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty”. Explanation 1 of such section says persons falling under any of the above descriptions are public servants, *whether appointed by the Government or not*. This section clearly creates two broad categories of public servants; one who are on pay role of the Government means government servant or government employee, and others who have simply been assigned a public duty.

vi) It was year 1966 when Section 65B was inserted by the Co-operative Societies (Second Amendment) Ordinance, 1966 (XVII of 1966), neither the schedule of West Pakistan Anti-Corruption Ordinance 1961 nor the Pakistan Criminal Law (Amendment) Act 1958 was amended so as to encompass offences under CSA 1925, because it was a special Act dealing with those public servants who were not on the pay role of the government. In the same year however, for regulating the official conduct of government servants, the Punjab Civil Servants (Conduct) Rules 1966 were also framed. Members of a society are not the servant or employees of Government or the Registrar Cooperative nor they are dependent upon him for their pay or other emoluments, so as to expose them for departmental inquiries, because it is the duty of Anti-Corruption Establishment either to prosecute or recommend for departmental inquiries against the public servants with framed charge sheet as mentioned in the respective Disciplinary Rules and ancillary instructions, but no such indication is mentioned in CSA 1925, and inquiry under such Act can only be initiated by the Registrar at his own pursuant to section 43 on the complaint through the persons mentioned therein (...) but for members of a society, special penal provisions have been introduced through CSA 1925, and simultaneously a power of inquiry into the affairs of society also vests in the Registrar therefore, neither matters of cooperative societies can be inquired into nor prosecuted by the Anti-Corruption Establishment before the Special Judge supra because schedule attached to West Pakistan Anti-Corruption Establishment Ordinance 1961 & Pakistan Criminal Law (Amendment) Act 1958 does not contain offences under CSA 1925. In section 63 of CSA 1925, no Court is mentioned for trial of offence under such Act. Thus, to settle the anomaly that when no Court is mentioned in the respective special law, what Court should have jurisdiction, I have found section 29 of Code of Criminal Procedure 1898(...) Thus, offences under CSA 1925 can either be tried by the High Court or by any Court mentioned in the second schedule of Cr.P.C. The maximum sentence for offences under CSA 1925 is five years which according to second schedule of Cr.P.C. under the head, “Offences Against Other Laws” is triable by Magistrate first Class. Thus, for offences under CSA 1925

Registrar shall file complaint before the Court of Magistrate concerned. In the attending circumstance and the discussion made above, Anti-Corruption Establishment would have no authority to inquire or investigate the offences under CSA 1925. However, if any person is aggrieved of any act of members of Management Committee or Officers of society which is an offence under Pakistan Penal Code 1860 or under any other law relating to public servants provided such offences shall also be included in the Schedule attached to Pakistan Criminal Law (Amendment) Act, 1958, he can file a direct complaint before Special Judge appointed under said Act and the Special Judge if considers it appropriate can direct for investigation by any police officer in whose jurisdiction the offence was wholly or partly committed, as mentioned in section 5, sub-section (6) of Pakistan Criminal Law (Amendment) Act 1958(...) If during investigation it surfaces that besides scheduled offences, some offences under CSA 1925 have also been committed, the Special Judge can also try such offences as authorized by section 5, sub-section 7 of Pakistan Criminal Law (Amendment) Act 1958 but not without the sanction of Registrar Cooperative societies.

vii) In the light of above discussion, Registrar had no authority to send the case to Anti-Corruption Establishment for indirect transmission to the Court of Special Judge, rather pursuant to direction of NAB Court shall initiate the process for imposing penalty upon the petitioners or trial of offences punishable under the CSA 1925. Likewise in such situation Anti-Corruption Establishment was also not authorized to initiate the inquiry into the matter on the impugned reference of Registrar.

- Conclusion:**
- i) The inquiry and prosecution procedure under CSA 1925 are vested in the Registrar.
 - ii) See Above Analysis No.ii
 - iii) Certain offences under CSA 1925 are punishable while others are only subject to penalties.
 - vi) Cognizance of offences under CSA 1925 requires a complaint by the Registrar except for offences under section 62A, sub-section (2),
 - v) See Above Analysis No.v.
 - vi) Offences under the Cooperative Societies Act, 1925, are triable by a Magistrate First Class.
 - vii) The Registrar had no authority to refer the case to the Anti-Corruption Establishment.

13. Lahore High Court
Erum Shahzadi & another v. Additional District Judge, Sialkot & 04 others
W. P. No. 9573 / 2024
Mr. Justice Abid Hussain Chattha
<https://sys.lhc.gov.pk/appjudgments/2025LHC151.pdf>

Facts: The facts of the case are that a minor was given to his paternal relatives for adoption at birth with the consent of his biological parents. The biological mother

later claimed she was coerced into the arrangement and sought custody, arguing that the adoptive parents had wrongfully registered the child under their parentage. The lower courts ruled in favour of the biological mother, emphasising the welfare of the minor and the legal principle that an adopted child's parentage cannot be altered.

- Issues:**
- i) Is adoption permissible under Islamic law, and do biological parents have a preferential right to custody over adoptive parents?
 - ii) Do Muhammadan Law and Islamic principles prioritise biological parents over custodial parents in child custody matters?
 - iii) Is adoption permissible only when biological parents are unavailable, with child welfare as the prime consideration?
 - iv) Is there a need for legislation to regulate adoption in Pakistan?

- Analysis:**
- i) There is no cavil to the proposition that adoption is permitted under the principles of Islamic Law but compelling circumstances under which adoption was necessary are required to be established. It is well settled that Real Parents have preferential right qua custody of their child unless the welfare of the child demands otherwise. (...) Therefore, welfare of the Minor was compromised when a dubious arrangement of adoption was undertaken.
 - ii) Paras 352 and 354 of the Muhammadan Law confer the custody of a child to his natural parents on the touchstone of welfare, particularly, the mother who is bestowed with inbuilt and inherent love and affection for her child more than anyone else in the world. There is no reason to deprive the Minor from his entitlement to be raised by his Real Parents alongwith his siblings. Such an act is precisely according to the principles enunciated by Islam which does not treat custodial parents as the same or equal in contrast to biological parents.
 - iii) In cases where biological parents of a child are not available for any reason, whatsoever, naturally custody of such child has to be assumed by someone else in order to raise the child and it is in this context that adoption of the child is permissible. However, in any event, the fundamental and cardinal principle of welfare of the Minor remains the guiding principle to decide custody matters depending upon the facts and circumstances of each case.
 - iv) The facts of this case also underscore absence of any statutory dispensation qua adoption in Pakistan and corresponding need for regulating the law of adoption. There may be innumerable cases where adoption is imperative, therefore, it is necessary that a law is promulgated by the legislature spelling out the circumstances under which adoption of a child can take place, the procedure for adoption and the rights and obligations of the adopted child and the custodial parents so that questions regarding adoption can be regulated and adjudged, accordingly. The PD&NC Act falls short to achieve this objective due to its limited scope.

- Conclusion:**
- i) Adoption is allowed but does not override biological parents' custody rights.

- ii) Muhammadan Law prioritizes biological parents, especially the mother, in custody matters.
- iii) Adoption is justified only if biological parents are absent, with child welfare as the key factor.
- iv) Pakistan needs legislation to regulate adoption and define related rights.

14. Lahore High Court, Lahore
Gabriel Francis v. The Registrar, Lahore High Court, Lahore
Service Appeal No. 02 of 2020
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Rasaal Hasan Syed, Mr. Justice Abid Hussain Chattha,
<https://sys.lhc.gov.pk/appjudgments/2025LHC209.pdf>

Facts: Appellant preferred this Service Appeal against the impugned Decision and Notification whereby, the respondent while reconsidering its earlier decision of removal from service imposed the penalty of dismissal from service upon the appellant who granted post arrest bail to the accused in Narcotic case while relying on fake report of Chemical Examiner upon which disciplinary proceedings were initiated against the appellant on the charge of misconduct and the Inquiry Officer recommended imposition of major penalty of dismissal from service upon him.

Issues:

- i) Whether judicial orders are entitled to protection under the law, and to what extent such protection is available when allegations of mala fide intent or extraneous considerations are established?
- ii) Whether an officer can be compulsorily retired based on a general reputation of corruption, even in the absence of specific proven allegations in disciplinary proceedings, to uphold integrity and efficiency in public service?
- iii) Whether the imposition of a major penalty of dismissal from service is justified when an officer deviates from prescribed procedure, acts with mala fide intent for extraneous considerations, and has a general reputation of corruption?

Analysis:

- i) There is no cavil to the proposition that judicial Orders are sacrosanct and are accorded due protection under the Act, 1850 and under Section 75 of CNSA as well as other provisions of law. The principle of according protection to judicial Orders is well entrenched in our jurisprudence provided that are passed in good faith without an element of mala fide. However, there is no concept of complete and absolute immunity if extraneous considerations are vividly established. The principle was articulated by the Supreme Court of Pakistan in case titled, “Government of Sindh and others v. Saiful Haq Hashmi and others” (1993 SCMR 956)
- ii) There were undeniable facts through which it is established that the Appellant had acquired a general reputation of being corrupt. In cases where general reputation of corruption is attributed to an officer, the superior Courts have leaned in favour of imposing the penalty of compulsory retirement. This Tribunal in its recent Judgment in case titled, “Muhammad Afzal Zahid, Ex-Additional District

& Sessions Judge v. Lahore High Court, Lahore through its Registrar” (2025 LHC 123) after analyzing the Judgments passed by the Supreme Court of Pakistan and that in the Indian jurisdiction, expressed the view that in cases where specific allegations qua corruption in disciplinary proceedings against an accused officer are not proved but the general reputation of such officer of being corrupt is established, the punishment of compulsory retirement can be validly inflicted. The principle is based on the rationale that in order to maintain honesty and integrity among service personnel, improve efficiency in administration of justice and restore public confidence in State institutions, officers of doubtful integrity or suspected of corruption can be compulsorily retired where sufficient evidence is not available to dismiss or remove them from service after considering the employee’s length of service, the nature of offence and the context surrounding misconduct.

iii) In the instant case, however, three elements have conjoined i.e. the Appellant passed a judicial Order in deviation of prescribed procedure in the Circular and express mandate of CNSA; the Appellant passed judicial Order with mala fide intent for extraneous considerations which was proved on record in terms that the Appellant was in close contact with the accused persons who were beneficiary of bail granting Order; and the Appellant had acquired a general reputation of being corrupt. These elements taken together proved the charge against the Appellant and swayed the Authority to impose the major penalty of dismissal from service upon him.

- Conclusion:**
- i) See above analysis No. i
 - ii) An officer can be compulsorily retired based on a general reputation of corruption, even in the absence of specific proven allegations in disciplinary proceedings, to uphold integrity and efficiency in public service
 - iii) see above analysis No iii.

15. Lahore High Court.
Abdul Ghaffar v. Umar Farooq
R.F.A. No. 27 of 2020
Mr. Justice Sultan Tanvir Ahmad
<https://sys.lhc.gov.pk/appjudgments/2025LHC175.pdf>

Facts: The appeal challenges a decree passed in a summary suit under Order XXXVII of the Code of Civil Procedure, 1908, where the defendant, despite being granted leave to defend, failed to file a written statement, leading to an ex-parte judgment in favor of the plaintiff.

Issues:

- i) Can the contents of a leave to defend application be treated as a written statement under the Code of Civil Procedure, 1908?
- ii) What is the legal consequence of a defendant’s failure to file a written statement after being granted leave to defend in a summary suit?

Analysis: i) The learned counsel for appellant has referred to some cases where leave

application is treated as written statement, however, most of the said decisions are under special enactments, where legislature has specifically permitted to treat the contents of application, upon grant of leave, as written statement. Whereas, Rule 7 of Order XXXVII of the Code provides that save as provided by this Order, the procedure shall be the same as the procedure in suits instituted in the ordinary manner.

ii) Order VIII, rule 10 C.P.C. empowers the Court to pronounce judgment against the defendant or make such order in relation to the suit as it thinks fit where the party fails to file written statement within the time fixed by the Court. Rule 10 of Order VIII, C.P.C. is penal in nature and it is within the discretion of the Court to announce judgment even without recording evidence. In case of *Sh. Abdus Saboor and Brothers v. Ganesh Flour Mills Ltd.* (PLD 1967 Lahore 779) it was observed: 'Under rule 10, the Court has been given the discretion to 'pronounce judgment against' the defendant. It does not mean at all that the Court is to take any further steps to ascertain the truth of the contentions raised in the plaint. In the phrase 'pronounce judgment against him' the words 'pronounce' and 'against him' are significant. Once the Court decides to exercise the discretion under rule 10, it has to pronounce the judgment against the defendant.

- Conclusion:**
- i) No, the contents of a leave to defend application cannot be treated as a written statement unless explicitly provided by specific legislation or if it fulfills the requirements under Order VIII of the Code.
 - ii) The failure to file a written statement after being granted leave to defend can result in the court pronouncing judgment against the defendant without requiring further evidence.

LATEST LEGISLATION/AMENDMENTS

1. The Digital Nation Pakistan Act, 2025 was promulgated on 29-01-2025 for transformation of Pakistan into a digital nation, enabling a digital society, digital economy, and digital governance.
2. Vide The Prevention of Electronic Crimes (Amendment) Act, 2025 dated 29-01-2025, amendments in sections 2, 30D, 43, 43A, 51 & 55, insertion of chapters 1A, 1B, & 1C, 50A, 51A and substitution of section 30 are made in The Prevention of Electronic Crimes Act, 2016.
3. Vide The Punjab Protected Areas (Amendment) Act, 2025 dated 27-01-2025, amendments in sections 2, 17, 20, 26, 28 and insertion of section 3A and omission of section 4 & 28 are made in The Punjab Protected Areas Act, 2020.
4. Vide The Punjab Wildlife (Protection, Preservation, Conservation and Management) (Amendment) Act, 2025 dated 27th January 2025, amendments are made in sections 2, 5, 20, 21, 22, 38, substitution of sections 3, 10, omission of sections 4, 31, 32, 34, 35, 36 and insertion of sections 10-A, 10-B,

- 22-A to 22-D, 30-A to 30-I and 44-B are made in The Punjab Wildlife (Protection, Preservation, Conservation and Management) Act, 1974.
5. Vide The Punjab Alternate Dispute Resolution (Amendment) Act, 2025 dated 29-01-2025, amendments in sections 11, 21 & 21-A are made in The Punjab Alternate Dispute Resolution Act, 2019.
 6. Vide The Punjab Prohibition of Kite Flying (Amendment) Act, 2025 dated 29-01-2025, amendments in sections 2 to 5, omission of sections 4-A, 4-B, 4-C and 8-D are made in The Punjab Prohibition of Kite Flying Ordinance 2001.
 7. Vide The Probation of Offenders (Amendment) Act, 2025 dated 29-01-2025, amendments in sections 1, 2, 5, 7 and insertion of section 5-A are made in The Probation of Offenders Ordinance, 1960.
 8. The Punjab Education, Curriculum, Training and Assessment Authority Act, 2025 was promulgated on 29-01-2025 to transform, innovate and raise educational standards.
 9. The Punjab Water and Sanitation Authority Act, 2025 was promulgated for establishment of the Punjab Water and Sanitation Authority.
 10. Vide The Defence Housing Authority Rawalpindi (Amendment) Act, 2025 dated 29-01-2025, amendments in sections 1, 2, 3, 5, 6, 10, 11 and substitution of section 20 was made in The Defence Housing Authority Rawalpindi Act, 2013.
 11. The Punjab Establishment of Special Courts (Overseas Pakistanis Property) Act, 2025 was promulgated on 29-01-2025 for adjudication of petition in respect of immovable properties of overseas Pakistanis.
 12. Vide The Punjab Tianjin University of Technology Lahore (Amendment) Act, 2025 dated 29-01-2025, amendments in sections 3 & 4 are made in The Punjab Tianjin University of Technology Lahore Act, 2018.
 13. Vide The Mir Chakar Khan Rind University of Technology Dera Ghazi Khan (Amendment) Act, 2025 dated 29-01-2025, amendments in sections 3 & 4 are made in The Mir Chakar Khan Rind University of Technology Dera Ghazi Khan Act, 2019.
 14. Vide The Punjab University of Technology Rasul (Amendment) Act, 2025 dated 29-01-2025, amendments in Act XXIII of 2018, sections 3 & 4 are made in The Punjab University of Technology Rasul Act, 2018.
 15. Vide notification No.HP-II/9-11/2018(P-II) dated 16-01-2025, amendment is made in the schedule III OF The Punjab Border Military Police and Baluch Levy Service Rules, 2009.
 16. Vide notification No.SO(CAB-I)2-1/2025(ROB) dated 16-01-2025, amendments are made in first and second schedule in The Punjab Government Rules of Business, 2011.
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SELECTED ARTICLES

1. MANUPATRA

<https://articles.manupatra.com/article-details/INTERPRETATION-OF-STATUTES-FUNDAMENTAL-PRINCIPLES-AND-JUDICIAL-APPROACHES>

Interpretation of Statutes: Fundamental Principles and Judicial Approaches By Vijeeta Bhatia

This article discusses statute interpretation and its basic principles. Before understanding the basic principles of interpretation, it is important to understand the meaning, objective, and necessity of interpretation. In India, the legislature enacts the law with a definite purpose. A statute is therefore the formal expression of the will of the Legislature. Quite often, we find courts and lawyers busy unfolding the meaning of ambiguous words and expressions and resolving inconsistencies. The statute's language is to be understood in its true sense as the courts have to administer justice. Hence, it becomes necessary to ascertain the true meaning of the words used in the statutes. Interpretation therefore is defined as the process of ascertaining the true meaning of writings or intent of the framers of the statutes. Salmond defines it as “the process by which the courts seek to ascertain the meaning of the Legislature through the medium of authoritative forms in which it is expressed”.

2. Lawyers Club India

<https://www.lawyersclubindia.com/articles/can-a-patient-sue-a-nurse-for-injuries-17419.asp>

Can a Patient Sue a Nurse for Injuries? By Yaksh Sharma

Patients sometimes wonder about their rights regarding injuries that occur during medical care. In certain circumstances, a patient can sue a nurse for injuries if negligence can be established. This may involve demonstrating that the nurse failed to provide the standard of care expected in their profession, leading to harm. The legal landscape surrounding medical malpractice is complex. Various factors, including the nature of the injury, the specific actions of the nurse, and the healthcare setting, influence the viability of a lawsuit. Understanding these elements is crucial for anyone considering taking legal action against a healthcare professional. In addition to medical records and evidence of the alleged injury, patients must also consider the role of hospital policies and oversight. Navigating these waters requires not only knowledge of health law but also guidance from legal professionals who specialize in medical malpractice cases.

3. MANUPATRA

<https://articles.manupatra.com/article-details/Gig-Economy-Challenges-and-Indian-Legal-Perspective>

The Gig Economy and Indian Law: Current Challenges and Opportunities By Tushar Kumar and Insha Afreen

The gig economy is an emerging sector that signifies a substantial shift from traditional employment models. It operates as a free-market system where businesses or individuals hire independent workers for a limited period to complete specific tasks. The term "gig" historically referred to short-term jobs undertaken by artists but now encompasses a broad spectrum of temporary work arrangements. This economy has gained prominence through the rise of digital platforms, which act as intermediaries, connecting workers with clients who seek their specialized skills. These platforms effectively bridge the gap between workers and employers, creating opportunities for short-term engagements. Under the Code of Social Security, 2020 (Section 2[35]), a gig worker is defined as someone engaged in tasks or work arrangements and earning money independently. This definition spans a wide array of roles, including food delivery personnel, freelance writers, rickshaw drivers, graphic designers, and other professionals offering project-specific expertise. The gig economy not only promotes flexibility and autonomy but also reshapes the conventional understanding of employment, paving the way for a dynamic labor market.

4. Lawyers Club India

<https://www.lawyersclubindia.com/articles/how-long-do-i-have-to-report-a-workplace-injury-17417.asp>

How Long Do I Have to Report a Workplace Injury? By Yaksh Sharma

Navigating the complexities of workers' compensation can be a daunting task for both employees and employers. In Georgia, the workers' compensation system is designed to provide crucial support to workers who are injured on the job, ensuring they receive necessary medical care and financial assistance during their recovery. This blog aims to demystify the intricacies of Georgia's workers' compensation laws, offering valuable insights and practical advice for those seeking to understand their rights and responsibilities. Whether you're an employee looking to file a claim or an employer aiming to stay compliant, this guide will provide you with the essential information you need to navigate the system effectively.

5. MANUPATRA

<https://articles.manupatra.com/article-details/The-Rise-of-Artificial-Intelligence-in-Arbitration-Exploring-the-Potential-and-Pitfalls-of-AI-Arbitrators>

The Rise of Artificial Intelligence in Arbitration: Exploring the Potential and Pitfalls of AI Arbitrators By Shreya Tiwari, Md. Almas Ahmar

Given the current state of technological development, this article evaluates the potential for artificial intelligence (AI) to function as an arbitrator. Acknowledging the lack of a unified AI definition, the study explores whether AI can fully replace human arbitrators or to what extent it can participate in arbitration processes. The research reviews issues arising from AI implementation in courts, assesses current AI models used in arbitration,

and provides a stage by-stage evaluation of AI integration in the arbitration process. It considers legal, ethical, and practical implications, addressing challenges such as fairness, transparency, accountability, data privacy, and algorithmic bias. The paper also weighs potential benefits like increased efficiency and cost-effectiveness. By incorporating these findings, the study highlights the necessity of continuing research, ethical standards, and regulatory oversight in this developing field and provides a fair evaluation of AI's present and future role in arbitration. It also offers a structure for the responsible integration of AI into the field of arbitration.
