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FORTNIGHTLY CASE LAW BULLETIN

(01-09-2023 to 15-09-2023)

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

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Abid Shahid Zuberi, Advocate Supreme Court of Pakistan v. Federation of Pakistan through Secretary, Cabinet Division, Islamabad and others and three other petitions
C.M.A. No. 3932 of 2023 in Constitution Petition No. 14 of 2023 and Constitution Petition Nos. 14 to 17 of 2023
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Ijaz ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._3932_2023.pdf

Facts: The Federal Government formed a three member Inquiry Commission through a notification to inquire into the veracity of audio leaks allegedly concerning including the Judiciary. Soon thereafter the Constitution petitions were filed in court challenging the vires of the impugned notification. During the course of hearing, the Federal Government filed recusal application and seeks the recusal of three learned members of the Bench. This judgment decided the recusal application.

Issues: i) What is conflict of interest and whether it is different from bias?
ii) Whether principle of necessity can be invoked in the context of judicial proceedings?
iii) Whether a judge has discretion to recuse from a case if his disqualification is sought?
iv) Whether a judge can perform his legal duty of administering justice in a particular case where either conflict of interest or bias (or both) is alleged against him?

Analysis: i) For this purpose the meaning and scope of the term 'conflict of interest' and its difference, if any, from 'bias' have been examined… The afore-quoted excerpts show that conflict of interest and bias are indeed two distinct grounds on which a party may seek the recusal of a Judge from hearing a case. Whilst conflict of interest is related to the Judge's interest in the subject matter of a particular case, bias is concerned with his state of mind and his feelings towards the parties appearing before him… As noted above, a conflict of interest is related to the subject matter of the litigation. This means that the Judge, whose recusal is being sought, must have a direct pecuniary, proprietary or personal interest in the litigation. A classic example of a Judge having a pecuniary interest in a litigation is Dimes v Grand Junction Canal Proprietors [10 ER 301 (1852) (HL)]. In that case the (then) Lord Chancellor, Lord Cottenham, owned a substantial shareholding in Grand Junction Canal which was an incorporated body. In a suit filed by Grand Junction Canal the Vice-Chancellor granted the relief sought. The appeal came before the Lord Chancellor who affirmed the decision of the Vice-Chancellor. The matter then came before the House of Lords which reversed the decree of the Lord Chancellor and Lord Campbell, in what is now regarded as the

classic formulation on disqualification on the basis of interest… Personal interest has been defined in Halsbury's Laws of England (Volume 61A, 2018)… Apart from pecuniary (financial) interest of a Judge, which has already been ruled out because the same was neither alleged nor pressed, the afore-noted comment in Halsbury's Laws explains that non-pecuniary interests are also included in personal interests. The 'promotion of a cause' has been cited as an example of one such interest. This particular ground was created by the House of Lords in R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No 2) ([2000] 1 AC 119) for setting aside its earlier decision wherein Lord Hoffman and two other Judges (by a majority of 3:2) had held that Augusto Pinochet, being the former Head of State of Chile, was not entitled to immunity and could be arrested, extradited and prosecuted for his alleged crimes against humanity. In this earlier decision of the House of Lords Amnesty International ("AI") was an intervener and argued in support of the proposition that Pinochet was not entitled to immunity. After the earlier decision was released information came to light that Lord Hoffman was a director of Amnesty International Charity Ltd ("AICL"), a registered charity which undertakes charitable works for AI. As a result, Pinochet lodged a petition in the House of Lords with the prayer that either the earlier decision be set aside or the opinion of Lord Hoffman be discarded. Ultimately, the House of Lords granted the former relief… The principle laid down above by the House of Lords treats the promotion of a cause by a Judge to be in conflict with his constitutional duties… The law is clear that for an interest to attract the disqualification of a Judge from a case, the same needs to be direct and certain.

ii) The rule was explained in the case of Justice Shaukat Ali and this dictum was subsequently quoted with approval by the Court in the cases of Federation of Pakistan Vs. Muhammad Akram Shaikh (PLD 1989 SC 689) and Parvez Musharraf Vs. Nadeem Ahmed (Advocate) (PLD 2014 SC 585). The above passage shows that even when a Judge suffers from a valid disqualification, the rule of necessity permits him to sit on the Bench if his jurisdiction is exclusive or if no substitute is provided by the law in his place.

iii) Whilst the law of the land grants a Judge discretion to recuse from a case if his disqualification is sought, the Holy Quran provides the criteria for guiding the exercise of such discretion… The Holy Quran makes it explicit that believers are expected to uphold the scales of justice even if such a course of action goes against their own interest or that of their parents or relatives. This is because of the higher duty to be impartial and to remain uninfluenced by any interest whilst dispensing justice that is owed by a Muslim to the Almighty. Therefore, there is no rule of Islamic Law requiring a Judge to refrain from administering justice in matters in which his personal interest or that of his relatives is involved. The Judge is nevertheless under the onerous obligation that he must not be swayed by any extraneous considerations when deciding a matter. This duty is also reflected in the Oath of Office taken by a Superior Court Judge: '[t]hat I [Judge] will not allow my personal interest to influence my official conduct or my official decisions' (ref: Third Schedule to the Constitution).

iv) In this respect, Pakistani jurisprudence also leaves it to the discretion of the Judge to decide whether he will be able to perform his legal duty of administering justice in a particular case where either conflict of interest or bias (or both) is alleged against him. Reliance in this regard is placed on Independent Media Corporation (supra) at para 13; Federation of Pakistan Vs. Muhammad Nawaz Sharif (PLD 2009 SC 284) at para 27; Islamic Republic of Pakistan Vs. Abdul Wali Khan (PLD 1976 SC 57) at pg.188. In these cases the following allegations were levelled against the Judges of the Court: i. In Independent Media Corporation (supra) the recusal of Justice Jawwad S. Khawaja was sought on account of his sister-in-law's brother being involved in the case before the Court. ii. In Muhammad Nawaz Sharif (supra) the recusal of Judges who had taken oath under the Provisional Constitution Order, 2007 was sought on the basis that the petitioner had expressed strong reservations against such acts. iii. In Abdul Wali Khan (supra) the recusal of two learned Judges was sought on the ground that they were previously associated with the case being prepared for the banning of the National Awami Party which was headed by the petitioner, Abdul Wali Khan. However, rejecting the contentions of the parties seeking recusal in each of the above cases, the Court observed that it was for the respective Judge(s) to decide whether to continue to sit on the Bench or not.

Conclusion: i) A conflict of interest is related to the subject matter of litigation which must be direct pecuniary, proprietary or personal interest in the litigation and it is different from bias.
ii) Principle of necessity can be invoked in the context of judicial proceedings.
iii) A judge has discretion to recuse from a case if his disqualification is sought.
iv) A judge can perform his legal duty of administering justice in a particular case where either conflict of interest or bias (or both) is alleged against him**.**

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2. **Supreme Court of Pakistan**
The Commissioner of Income Tax v. M/s. Inter Quest Informatics Services
Civil Appeals No. 94 to 106/ 2008 and Civil Appeal No. 550/ 2011
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Qazi Faez Isa, Mr. Justice Syed Mansoor Ali Shah.
https://www.supremecourt.gov.pk/downloads_judgements/c.a._94_2008.pdf

Facts: The High Court of Sindh at Karachi decided fourteen income tax references which had been filed by the respondent respectively under section 136 (1) of the Income Tax Ordinance, 1979 and section 133 (1) of the Income Tax Ordinance, 2001. A Divisional Bench of the High Court decided thirteen of these references though a common judgment and one was later on decided, which relied on its earlier judgment.

Issues: i) Which law attends to agreements for the avoidance of double taxation and prevention of fiscal evasion which the Government of Pakistan may enter with other countries?
ii) What is the concept of Royalties under Article 12 of the Tax treaty?

iii) Which country is entitled to tax the payment under the Tax treaty/Convention?

Analysis: i) Section 163 of ITO 1979 (section 107 of ITO 2001) attends to agreements for the avoidance of double taxation and prevention of fiscal evasion which the Government of Pakistan may enter with other countries.

ii) The term 'Royalty' as defined in Article 12 of the Tax treaty is as follows:
Payment of any kind received as consideration for the use of, or the right to use:
i) a patent, trademark or tradename, secret formula or process design or model, or information concerning industrial, commercial or scientific experience.
ii)Industrial, commercial or scientific equipment, cinematograph films and tapes for television and broadcasting; (…) Royalties shall be deemed to arise in one of the States when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of one of the States or not, has in one of the States a permanent establishment or a fixed base in connection with which the contract under which the royalties are paid was concluded, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated. (…) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

iii) The High Court did not abide by the recognized principle of interpretation that the State in which payment is made (under the Convention) is generally entitled to tax such payment, as was reiterated in the case of A. P. Moller v Commissioner of Income Tax. (…)'However, if two reasonable interpretations of Article 8(3) are possible, or if there is any doubt or ambiguity in its interpretation (especially in relation to the expression "profits derived from sources within the other Contracting State") that should be resolved in favour of Pakistan having the right to tax… It is a recognized interpretation that the "source State" is the State in which payment is made, and generally such State is regarded as entitled to tax such payments. Pakistan is clearly the "source State" in the facts and circumstances of the present case since payments are made here by the Pakistani buyers. Thus, the amounts received or receivable in Pakistan by the carriers are "profits derived from sources within" Pakistan and hence can be reasonably regarded as within the taxing right of this country as contemplated by Article 8(3).'

Conclusions: i) Section 163 of ITO 1979 (section 107 of ITO 2001) attends to agreements for the avoidance of double taxation and prevention of fiscal evasion which the Government of Pakistan may enter with other countries.

ii) The term "royalties" as used in Article 12 of the Tax treaty means payments of

any kind received as a consideration for the use of, or the right to use: a) a patent, trademark or tradename, secret formula or process design or model, or information concerning industrial, commercial or scientific experience. b) Industrial, commercial or scientific equipment, cinematograph films and tapes for television and broadcasting;
iii) It is recognized principle of interpretation that the State in which payment is made (under the Convention) is generally entitled to tax such payment.

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3. **Supreme Court of Pakistan**
Imran Ahmad Khan Niazi v. Federation of Pakistan through Secretary, Law and Justice Division, Islamabad and another
Const. P. 21/2022 and C.M.A. 5029/2022
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Ijaz Ul Ahsan, Mr. Justice Syed Mansoor Ali Shah
https://www.supremecourt.gov.pk/downloads_judgements/const.p._21_2022_15092023.pdf

Facts: Through present Constitution Petition, the petitioner has challenged the amendments made to the National Accountability Ordinance, 1999 by the National Accountability (Amendment) Act, 2022 ("First Amendment") and the National Accountability (Second Amendment) Act, 2022 ("Second Amendment") (collectively referred to as the "2022 Amendments").

Issues: i) Whether acts of corruption and corrupt practices can be challenged under Article 184(3) of Constitution?
ii) Whether Supreme Court has jurisdiction to take cognizance of amendments in the accountability law?
iii) Whether Supreme Court has to consider the antecedents of standing of person who has filed petition under Article 184(3) of Constitution?
iv) Whether Parliament can encroach into the jurisdiction of Judiciary?
v) Whether elected holders of public office are public servant and can be prosecuted before any other fora than accountability Court?
vi) What is effect of raising the minimum threshold of the NAB to 500 million?
vii) What is effect of omission of section 21(g) of the NAB Ordinance?
viii) Whether proviso can nullify the main section?
ix) What is effect of insertion of second proviso to section 25(b) of the NAB Ordinance vide section 14 of the Second amendment in NAB Ordinance?

Analysis: i) By virtue of the Article 184(3), the Court can pass appropriate orders in cases where the enforcement of a Fundamental Right(s) affecting the public at large is involved. It is by now well-established in our jurisprudence that acts of corruption and corrupt practices do infringe the Fundamental Rights of the public and thus meet the test of Article 184(3).
ii) The 2022 Amendments have limited the NAB's jurisdiction thus excluding hundreds of pending references from trial before any forum and have also made the proof of the offence of corruption and corrupt practices significantly harder

for references that satisfy the jurisdictional requirements of Section 4 and Section 5(o) of the NAB Ordinance. We think it would be a legal absurdity to hold that whilst Supreme Court can take cognizance of individual acts of corruption and corrupt practices under Article 184(3) it cannot do so when amendments have been introduced in the accountability law i.e., the NAB Ordinance which exclude the jurisdiction of the NAB to investigate and prosecute holders of public office in two significant respects thereby ex-facie violating Articles 9, 14, 23 and 24 of the Constitution by exonerating the holders of public office from their alleged acts of corruption and corrupt practices by failing to provide a forum for their trial. The 2022 Amendments have therefore rendered the NAB toothless in accomplishing its objective of 'eradicating corruption and corrupt practices and holding accountable all those persons accused of such practices' and have left public property belonging to the people of Pakistan vulnerable to waste and malfeasance by the holders of public office.

iii) Locus standi is not an impediment when Supreme Court is exercising original jurisdiction. Therefore, to dismiss the instant petition solely on the ground that the petitioner did not object to the 2022 Amendments in the National Assembly would result in the Court deciding the question of maintainability on the basis of an irrelevant consideration… It is settled law that when Supreme Court exercises jurisdiction under Article 184(3) of the Constitution it is not concerned with the antecedents or standing of the person who has filed the petition because that person is merely acting as an informant. Instead, the Court favours a substantive approach focusing more on the content of the petition and whether the same crosses the threshold set out in Article 184(3).

iv) The judgments of the Superior Courts indicate that the minimum pecuniary threshold of NAB should be Rs.100 million (except in limited circumstances where offences less than Rs.100 million cannot be prosecuted by any other accountability agency), Section 3 of the Second Amendment has increased this minimum threshold to Rs.500 million. No cogent argument was put forward by learned counsel for the respondent Federation as to why Parliament has fixed a higher amount of Rs.500 million for the NAB to entertain complaints and file corresponding references in the Accountability Courts when the Superior Courts have termed acts of corruption and corrupt practices causing loss to the tune of Rs.100 million as mega scandals. It is accepted that Parliament is empowered to legislate freely within its legislative competence laid down by the Constitution. However, it is also a settled principle of our constitutional dispensation that the three organs of the State i.e., the Legislature, the Executive and the Judiciary perform distinct functions and that one organ of the State cannot encroach into the jurisdiction of another organ.

v) On a careful examination of the provisions of Prevention of Corruption Act, 1947; Pakistan Penal Code, 1860; Income Tax Ordinance, 2001; and Anti-Money Laundering Act, 2010, it becomes clear that the two are applicable only to public servants. Public servant is defined in the PPC in Section 21. Section 2 of the 1947 Act also relies on Section 21 of the PPC to define public servant. Therefore, in

both laws the term 'public servant' has an identical meaning. One example of public servants is given in Article 260 of the Constitution. It may be noticed that under the Constitution persons in the service of Pakistan are those who are holding posts in connection with the affairs of the Federation or Province. As a result, such persons are either dealing with the property of the Federal/Provincial Government or with the pecuniary interests of the Federal/Provincial Government. They, therefore, come within the definition of public servant set out in the PPC and adopted by the 1947 Act and so can be prosecuted under these laws for the offence of corruption and corrupt practices. However, elected holders of public office do not qualify as public servants under the guise of being in the service of Pakistan because Article 260 of the Constitution specifically excludes them from such service. Elected holders of public office are not triable either under the 1947 Act or the PPC for the offence of corruption and corrupt practices… This legal situation also explains why the Holders of Representative Offices (Prevention of Misconduct) Act, 1976 ("1976 Act") was enacted and Holders of Representative Offices (Punishment for Misconduct) Order, 1977 ("1977 Order") was promulgated. Both these laws applied only to holders of representative office i.e., elected holders of public office and subjected them to prosecution for offences similar to those prescribed in the NAB Ordinance. If elected holders of public office can be tried under the 1947 Act and the PPC then there would have been no need to pass the 1976 Act or the 1977 Order since both the 1947 Act and the PPC precede these laws. Once excluded from the jurisdiction of the NAB no other accountability fora can take cognizance of their alleged acts of corruption and corrupt practices.

vi) By amending Section 5(o) of the NAB Ordinance to raise the minimum pecuniary threshold of the NAB to Rs.500 million, Section 3 of the Second Amendment has undone the legislative efforts beginning in 1976 to bring elected holders of public office within the ambit of accountability laws because by virtue of Section 3 elected holders of public office have been granted both retrospective and prospective exemption from accountability laws. Once excluded from the jurisdiction of the NAB no other accountability fora can take cognizance of their alleged acts of corruption and corrupt practices as noted above. Such blanket immunity offends Articles 9, 14, 23 and 24 of the Constitution because it permits and encourages the squandering of public assets and wealth by elected holders of public office as there is no forum for their accountability. The immunity also negates Article 62(1)(f) of the Constitution which mandates that only 'sagacious, righteous, non-profligate, honest and ameen' persons enter Parliament. It also offends the equal treatment command of Article 25 of the Constitution as differential treatment is being meted out to persons in the service of Pakistan than to elected holders of public office. This is because persons in the service of Pakistan can still be prosecuted for the offence of corruption and corrupt practices under the 1947 Act as they fall within the definition of public servants.

vii) It is a common fact that many accused persons being tried under the NAB Ordinance have stashed their wealth and assets abroad in tax havens under

fiduciary instruments. However, after the omission of the section 21(g) of NAB Ordinance, the admissibility of foreign public documents shall be governed by Article 89(5) of the Qanune-Shahadat Order, 1984. It may be observed that the process of admitting foreign public documents under the 1984 Order is protracted and cumbersome because it requires either the production of the original document or a copy which is certified not only by the legal keeper of the document but also by the Embassy of Pakistan. Further, the character of the document needs to be established in accordance with the law of the foreign country. Additionally, foreign private documents would need to be established through the procedure set out in Articles 17 and 79 of the 1984 Order which would require that two attesting witnesses from the foreign country enter personal appearance for proving the execution of the foreign private document. Such a process naturally entails time as the foreign evidence needs to pass through red tape. It therefore defeats the purpose for which Section 21(g) was inserted into the NAB Ordinance i.e., that after State cooperation led to the receipt of relevant foreign evidence the same would be directly admissible in legal proceedings initiated under the NAB Ordinance without fulfilling the onerous conditions of Article 89(5) of the 1984 Order. By deleting Section 21(g) from the NAB Ordinance Section 14 of the First Amendment has made it near impossible for relevant and necessary foreign evidence to be used in the trials of accused persons. It therefore offends the Fundamental Rights of the people to access justice and protect public property from waste and malfeasance.

viii) It is established law that whilst a proviso can qualify or create an exception to the main section it cannot nullify the same.

ix) The second proviso to Section 25(b) of the NAB Ordinance which renders a plea bargain entered into by an accused person inoperative if the accused fails to make the complete payment as approved by the Accountability Court. Despite the benign purposes behind introducing the second proviso to Section 25(b), the actual effect of it is that it nullifies Section 25(b) itself which was inserted in the NAB Ordinance ‘to facilitate early recovery of the ill-gotten wealth through settlement where practicable. Moreover, it is an admitted fact that under the proviso to Section 15(a) of the NAB Ordinance (disqualification to contest elections or to hold public office) an accused person who enters into a plea bargain suffers the same consequences as an accused person who is convicted of the offence of corruption and corrupt practices under Section 9(a). Such consequences are that the accused person either forthwith ceases to hold public office, if any, held by him or further stands disqualified for a period of ten years for seeking or from being elected, chosen, appointed or nominated as a member or representative of any public body etc. Therefore, allowing an accused person to renege from his plea bargain would be tantamount to conferring an unlawful benefit on him i.e., he would escape the consequences stipulated in Section 15(a) of the NAB Ordinance.

Conclusion: i) Yes, acts of corruption and corrupt practices can be challenged under Article 184(3) of Constitution.

ii) Supreme Court has jurisdiction to take cognizance of amendments in the accountability law.

iii) When Supreme Court exercises jurisdiction under Article 184(3) of the Constitution it is not concerned with the antecedents or standing of the person who has filed the petition because that person is merely acting as an informant.

iv) The Legislature, the Executive and the Judiciary perform distinct functions and that one organ of the State cannot encroach into the jurisdiction of another organ.

v) Elected holders of public office are not public servant and cannot be prosecuted before any other fora than accountability Court.

vi) Raising of the minimum threshold of the NAB to 500 million excludes the elected holders of public officer from the ambit of accountability laws. Such blanket immunity offends Articles 9, 14, 23, 24, 25 and 62 (1) (f) of the Constitution.

vii) By deletion of Section 21(g) from the NAB Ordinance Section 14 of the First Amendment has made it near impossible for relevant and necessary foreign evidence to be used in the trials of accused persons.

viii) A proviso can qualify or create an exception to the main section it cannot nullify the same.

ix) The second proviso to Section 25(b) of the NAB Ordinance renders a plea bargain entered into by an accused person inoperative if the accused fails to make the complete payment as approved by the Accountability Court. Allowing an accused person to renege from his plea bargain would be tantamount to conferring an unlawful benefit on him i.e., he would escape the consequences stipulated in Section 15(a) of the NAB Ordinance (disqualification to contest elections or to hold public office).

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4. **Supreme Court of Pakistan**
Haji Tooti v. The Federal Board of Revenue, Islamabad & others
Civil Appeal No.24 -Q of 2014 and Civil Appeal No.26 -Q of 2018
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._24_q_2014.pdf

Facts: These two appeals arise under the Customs Act, 1969 and raise the same questions of law, on facts that can broadly be regarded as similar. The appeals are against two separate judgments of the High Court. In first appeal a writ petition filed by the first appellant was dismissed by first judgment. In the other matter, second appeal a tax reference filed by the department was allowed by means of the second judgment.

Issues: i) What is the nature of order made by the officer under section 181 of the Customs Act, 1969?

ii) Whether the interpretation of statute/provision is permissible which makes it

redundant?
iii) What is scope of section 223 of the Customs Act, 1969?

Analysis: i) Firstly, and with respect to the learned High Court, the order made by the concerned officer under s. 181 is not in exercise of quasi-judicial functions. It is in exercise of a statutory power, and is in the nature of an administrative or executive order. Secondly, if the submissions made by learned counsel are accepted that would in effect reduce the second proviso of s. 181 to redundancy. This would be so because any exercise of the statutory power thereby conferred would "interfere" with the power conferred on the officer of customs under the main part. The result would be that the power under the second proviso could never be exercised, i.e., would be made redundant. (…) That is, a notification issued under s. 181 is not some general administrative or executive order, instruction or direction given by the FBR. It is rather the exercise of a specific and separate statutory power conferred under a different provision for a distinct purpose.

ii) It is well settled that redundancy is not to be lightly imputed, and an interpretation that yields such a result is to be avoided if at all possible.

iii) Thirdly, learned counsel have, with respect, misunderstood s. 223. This section is not exclusive to the Act; it is to be found in all fiscal statutes, cast in nearly identical terms. It confers a broad and general power, of an administrative and executive nature, on the FBR (in its capacity as the body at apex of the fiscal hierarchy) to supervise, control and guide the tax authorities in the discharge of their duties and functions under the tax laws. However, some of those powers and duties are of a quasi- judicial nature such as, e.g., those conferred on officers holding an appellate post (Collector (Appeals)) or exercising powers in revision. It would obviously be wrong in principle (and contrary to the well established jurisprudence of this Court and the High Courts) for the FBR to be in a position to influence or affect the proceedings of such authorities. Hence, the proviso. It is not to be regarded as a standalone provision; it makes sense only when read along with the main part of s. 223.

Conclusions: i) Order made by the officer under s. 181 of the Customs Act, 1969 is not in exercise of quasi-judicial functions, rather it is in exercise of a statutory power, and is in the nature of an administrative or executive order.

ii) Yes, any such interpretation which makes the statute/provision redundant, is to be avoided.

iii) Section 223 of the Customs Act, 1969 confers a broad and general power, of an administrative and executive nature, on the FBR to supervise, control and guide the tax authorities in the discharge of their duties and functions under the tax laws.

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5. **Supreme Court of Pakistan**
Zulfiqar Ali Bhatti v. Election Commission of Pakistan and others etc.
Civil Appeal No.142 of 2019, Civil Petition No.1369 of 2019
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.a._142_2019.pdf

Facts: The appellant and respondent, along with other candidates, contested the Election. The respondent made application for recounting of votes which was dismissed by returning officer and respondent filed petition before Election Commission which was disposed of with direction to approach the appropriate forum. The respondent assailed the said orders before High Court through writ petition which was accepted. The appellant challenged the order of High Court before Supreme Court. Supreme Court suspended the order of High Court and directed the Election Commission to issue the notification of the appellant as a returned candidate, which was issued on the same day. Given the issuance of the said notification, the respondent filed the election petition before the Election Tribunal. However, during the pendency of the election petition, this Court disposed of the appeal of the appellant vide a consent order directing the Returning Officer to recount the votes of the whole constituency and submit a report of the recount to the Election Commission. The returning officer reported tempering with poll record. On the report of fact finding inquiry committee, the Election Commission made order for re-poll. In view of the order of the Election Commission for holding a re-poll in 20 polling stations, the respondent withdrew his election petition, while the appellant challenged this order of the Election Commission in the Islamabad High Court through a writ petition filed under Article 199 of the Constitution as well as in this Court through the present appeal filed under Section 9(5) of the Elections Act. The Islamabad High Court dismissed the writ petition. The appellant filed the petition for leave to appeal against that order of the Islamabad High Court also, in this Court.

Issues: i) What power is entrusted to Election Commission under Article 218(3) of Constitution?
ii) Whether powers of Election Commission provided under section 8(c) of the Elections Act are different from powers mentioned in Article 218(3) of Constitution?
iii) What are the meaning of term "election" and expression "conduct the election" used in Articles 218 & 225 of Constitution?
iv) What are three requisites for bringing election machinery into operation?
v) Whether Election Commission can initiate a roving enquiry to search some illegalities or violations, on bald and vague allegations, in the exercise of its jurisdiction under Section 9(1) of the Elections Act.?
vi) What is nature of enquiry conducted by Election Commission u/s 9 (1) of Election Act and what is effect of not disposing of case within given time u/s 9(1)?

vii) Whether abatement of proceedings of a case u/s 9 by the Election Commission bars the re-agitation before and trial by the Election Tribunal of same grounds?

viii) Whether illegality or violation committed after the consolidation of the final result by the Returning Officer can be said to have materially affected the result of the poll for the purpose of exercise of power u/s 9(1)?

ix) Whether mentioning a wrong or inapplicable provision of law etc. by itself have fatal consequences?

Analysis: i) Article 218(3) of the Constitution entrusts the Election Commission with the duty "to organize and conduct the election", and empowers it, in general terms, "to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against". The power so conferred is restricted to the fulfillment of the duty specified, that is, "to organize and conduct the election".

ii) A bare reading of Section 8(c) of the Elections Act shows that it merely reiterates the power that is vested in the Election Commission under Article 218(3) of the Constitution by substituting the words "make such arrangements" with the words "issue such instructions, exercise such powers and make such consequential orders" that are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law. This reiteration of the power of the Election Commission by a sub-constitutional law is of little legal significance, in view of the conferment of that power already by the supreme law of the land – the Constitution.

iii) The words "election" and "conduct the election", have been used in Articles 218 and 225 of the Constitution in a wide sense to connote the entire election process consisting of several steps starting with the issuance of the election programme and culminating with the declaration of the returned candidate, which include filing of the nomination papers, scrutiny of the nomination papers, withdrawal of the candidates, holding the poll, counting of the votes, consolidation of the result and declaration of the returned candidates, etc. In this wide sense, the process of conducting the election starts with the issuance of the election programme and stands completed on the publication of the names of the returned candidates in the official gazette.

iv) 'Broadly speaking, before an election machinery can be brought into operation, there are three requisites', as said by Justice Fazal Ali, 'which require to be attended to, namely, (1) there should be a set of laws and rules making provisions with respect to all matters relating to, or in connection with, elections, and it should be decided as to how these laws and rules are to be made; (2) there should be an executive charged with the duty of securing the due conduct of elections; and (3) there should be a judicial tribunal to deal with disputes arising out of or in connection with elections.' On reading the provisions of Part VIII of the Constitution, , in general, Article 222 of the Constitution deals with the first of

these requisites, Articles 218 and 219 with the second, and Article 225 with the third requisite.

v) The Election Commission, under Section 9(1) of the Elections Act, has power to conduct such enquiry as it may deem necessary for its satisfaction about the alleged grave illegalities or violations, in addition to the "facts apparent on the face of the record", but before initiating such inquiry by the Election Commission the facts apparent on the face of the record must prima facie indicate the commission of some grave illegality or violation of the Elections Act or the Rules made thereunder, during the election process. The Election Commission cannot initiate a roving enquiry to search for some illegalities or violations, on bald and vague allegations unsupported by prima facie proof, in the exercise of its jurisdiction under Section 9(1) of the Elections Act.

vi) The enquiry which the Election Commission can conduct under Section 9 (1) of Election Act can only be of a summary nature, notwithstanding the omission of the word "summary" in Section 9(1), as the Election Commission can make an order for re-poll under this Section before the expiration of sixty days after publication of the name of the returned candidate under Section 98 of the Elections Act, not thereafter. Where the Election Commission does not finally dispose of a case initiated under Section 9(1) within the said period, the proceedings stand abated and the election of the returned candidate is deemed to have become final, subject to the decision of the Election Tribunal on the election petition, if any, as per section 9(3) of the Elections Act.

vii) The dismissal of a petition or the abatement of proceedings of a case under Section 9 by the Election Commission does not bar the re-agitation before and trial by the Election Tribunal, of the same grounds of grave illegalities or violations of the Elections Act or the Rules made thereunder.

viii) The grave illegalities or violation of the provisions of the Elections Act or the Rules, the result of the poll at one or more polling stations or in the whole constituency must have been materially affected. Any illegality or violation which does not relate to holding and conducting the poll in the election process, and has thus not affected the result of the poll, cannot form the basis for invoking and exercising the power under Section 9(1) by the Election Commission. The grave illegalities or violations must be such that have materially affected the result of the poll. Although such illegalities or violations may have been committed at any stage of the election process, but not later than the final consolidation of the result of the poll by the Returning Officer under Section 95 of the Elections Act; as any illegality or violation committed after the consolidation of the final result by the Returning Officer cannot be said to have materially affected the result of the poll. It, therefore, does not fall within the scope of the provisions of Section 9(1) of the Elections Act and cannot be a subject of enquiry by the Election. Needless to mention that any fact-finding enquiry or departmental regular enquiry may be got conducted by the Election Commission, in the matter of any illegality or violation committed after the consolidation of the final result to take appropriate

administrative or criminal action against the delinquent election officials, but not for an action under Section 9(1) of the Elections Act.

ix) The mentioning of a wrong or inapplicable provision of law or non-mentioning of the applicable provision of law while exercising a jurisdiction or a power which is otherwise vested in a court, tribunal or authority, does not by itself have fatal consequences.

Conclusion: i) The power conferred under Article 218(3) of Constitution is restricted to the fulfillment of the duty specified, that is, "to organize and conduct the election".

ii) Section 8 (c) of Elections Act merely reiterates the power that is vested in the Election Commission under Article 218(3) of the Constitution.

iii) The words "election" and "conduct the election", have been used in Articles 218 and 225 of the Constitution in a wide sense to connote the entire election process consisting of several steps starting with the issuance of the election programme and culminating with the declaration of the returned candidate.

iv) See above.

v) The Election Commission cannot initiate a roving enquiry to search for some illegalities or violations, on bald and vague allegations unsupported by prima facie proof, in the exercise of its jurisdiction under Section 9(1) of the Elections Act.

vi) The enquiry which the Election Commission can conduct under Section 9 (1) of Election Act can only be of a summary nature, notwithstanding the omission of the word "summary" in Section 9(1). Where the Election Commission does not finally dispose of a case initiated under Section 9(1) within the sixty days, the proceedings stand abated and the election of the returned candidate is deemed to have become final, subject to the decision of the Election Tribunal on the election petition, if any, as per section 9(3) of the Elections Act.

vii) The dismissal of a petition or the abatement of proceedings of a case under Section 9 by the Election Commission does not bar the re-agitation before and trial by the Election Tribunal, of the same grounds of grave illegalities or violations of the Elections Act or the Rules made thereunder.

viii) Any illegality or violation committed after the consolidation of the final result by the Returning Officer cannot be said to have materially affected the result of the poll. It, therefore, does not fall within the scope of the provisions of Section 9(1) of the Elections Act and cannot be a subject of enquiry by the Election.

ix) The mentioning of a wrong or inapplicable provision of law or non-mentioning of the applicable provision of law while exercising a jurisdiction or a power which is otherwise vested in a court, tribunal or authority, does not by itself have fatal consequences.

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6. **Supreme Court of Pakistan**
The Competition Commission of Pakistan and others v. Dalda Foods Limited, Karachi
Civil Appeal No.1692 of 2021
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1692_2021.pdf

Facts: The Appellants have impugned judgment passed by the Islamabad High Court, Islamabad, whereby, the writ petition filed by the Respondent was allowed. Leave was granted to consider the provisions of the Competition Act, 2010 (Act) with reference to the powers of conducting an enquiry.

Issues: i) Whether enquiries and studies which are referred together in Section 37 of the Competition Act 2010 serve distinct functions?
ii) Whether the Competition Commission of Pakistan (CCP) is obligated to communicate its reasons to the undertaking, and if so, whether it is required to justify its decision with supporting material?
iii) Where the Competition Commission of Pakistan (CCP) receives a complaint, in this situation, it is required to first establish the veracity of the complaint to ensure that it is either frivolous or vexatious?
Additional Note
iv) Whether the power of the Competition Commission of Pakistan (CCP) under Section 36 of the Competition Act 2010 to call upon an undertaking to furnish certain information is a "proceeding" within the meaning of this term as used in Section 33 of the Act?

Analysis: i) Although enquiries and studies are referred together in Section 37 of the Act, they serve distinct functions, Enquiry is a process available to the CCP to assess contravention of the Act before it initiates any proceedings under Section 30 of the Act. Whereas, studies, as provided under Section 28(1)(b) of the Act, are conducted to promote competition in all sectors of economic activity and in terms of Section 37(3) of the Act, they are a function which may be outsourced by hiring consultants on contracts, Both enquiry and studies are used as independent tools by the CCP to collect and assess information on market trends and do not constitute an adverse action against the undertaking. There is also a clear difference between the scope of "enquires" and "studies" to be conducted by the Commission under the Act. They cannot be used by the Commission as two alternate modes to ascertain any contravention of the Act before it initiates any specific action against an undertaking. Enquiries are a process available to the Commission to assess any contravention of the Act before it initiates any specific action against an undertaking. However, this is not the object of "studies". Their object is mentioned in Section 28(1)(b): the "studies" are to be conducted 'for promoting competition in all sectors of commercial economic activity', not to initiate any specific action against an undertaking.

ii) The question which arises now is whether the CCP is obligated to communicate its reasons to the undertaking, and if so, whether it is required to justify its decision with supporting material. The respondent argues that the CCP is obligated to inform them of the allegations raised, along with supporting material, and the reasons for conducting an enquiry. The CCP being a regulator must always act in a transparent manner, keeping the undertaking informed of its decisions. However, we have already stated that Section 37 does not in itself result in penal consequences and that the procedure is not a proceeding within the meaning of Section 33. However, the CCP is required to provide the gist of its reasons as recorded in its internal deliberations which led to the decision of initiating such enquiry. This is a minimum requirement for the purposes of transparency and good governance and also facilitates the regulatory process by keeping the undertaking informed.

iii) Where the CCP receives a complaint, in this situation, it is required to first establish the veracity of the complaint to ensure that it is neither frivolous or vexatious and that there are sufficient facts provided in the complaint to necessitate an enquiry, as this is an enquiry prompted by a third person, the complainant. Section 37(2) of the Act requires the CCP to satisfy itself in the first instance before initiating an enquiry such that the mere filing of a complaint does not automatically result in an enquiry rather it requires the CCP to consider the complaint and determine whether it merits an enquiry. For the purposes of this enquiry, the CCP has to satisfy itself that there is sufficient cause to initiate an enquiry and in the course of due process when informing the undertaking of the enquiry, the CCP should disclose the nature of the complaint and the allegations contained therein to the undertaking. Before proceeding with the complaint under Section 37(2) of the Act, the CCP should form a written opinion that the complaint is not frivolous, vexatious or based on insufficient facts or necessitates an enquiry. The Regulations themselves cater to this by requiring, under Regulation 18, the necessary contents that form a complaint and therefore are required for assessing the veracity of a complaint. Regulation 18(2) prescribes that the complaint, reference, or application shall contain a brief statement of facts, a summary of the alleged contravention of the Act, a succinct presentation in support of each contravention, such other particulars as may be specified by the Commission, a schedule listing all documents/affidavits/evidence in support of each of the presentations, and the relief(s) sought.

Additional Note

iv) In view of the above principle, the argument that the power of the Commission under Section 36 of the Act to call upon an undertaking to furnish certain information is a "proceeding" within the meaning of this term as used in Section 33 of the Act, is not sustainable. Section 36 of the Act gives the Commission only one power, that is, to "call upon an undertaking to furnish periodically or as and when required any information concerning the activities of the undertaking". By treating this "power to call information" as a "proceeding" within the meaning of Section 33, we would be conferring upon the Commission a long list of powers

provided in Section 33, which include summoning and enforcing the attendance of any person and requiring the production of any books, accounts or other documents in the custody of an undertaking, etc. and by so doing we would be adding further powers of the Commission in Section 36 of the Act to interfere in the exercise of the fundamental right of the citizens of Pakistan to conduct any lawful trade or business which the Legislature has not provided therein.

Conclusion: i) Enquiries and studies which are referred together in Section 37 of the Competition Act 2010 serve distinct functions.
ii) The Competition Commission of Pakistan (CCP) is obligated to communicate its reasons to the undertaking, and if so, it is required to justify its decision with supporting material.
iii) Where the Competition Commission of Pakistan (CCP) receives a complaint, it is required to first establish the veracity of the complaint to ensure that it is either frivolous or vexatious.

Additional Note

iv) The power of the Competition Commission of Pakistan (CCP) under Section 36 of the Competition Act 2010 to call upon an undertaking to furnish certain information is not a "proceeding" within the meaning of this term as used in Section 33 of the Act.

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7. **Supreme Court of Pakistan**
Commissioner, Rawalpindi/Province of the Punjab etc. v. Naseer Ahmed etc.
Civil Petitions No.1441 to 1449 of 2021
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1441_2021.pdf

Facts: The petitioners sought leave to appeal against a consolidated judgment of the Lahore High Court, whereby the High Court, while accepting the writ petitions of the respondents, had set aside the notifications issued in respect of the acquisition of land owned by the respondents and others.

Issues: (i) Whether the District Collector has lawful authority to issue an addendum to a notification already issued under section 4 of the Land Acquisition Act, 1894?
(ii) Whether an addendum to a notification under section 4 of the Land Acquisition Act, 1894 can be issued after a notification under section 5 or section 17(4) of the Act has been issued?
(iii) What is the legal effect of the issuance of the Addendum Notification on the acquisition proceedings in general?
(iv) What is the legal effect of the issuance of the Addendum Notification on the determination of compensation?

Analysis: (i) The Act neither provides for nor prohibits issuance of an addendum to a notification already issued under Section 4 of the Act. However, as per Section 20 of the Punjab General Clauses Act 1956 (“1956 Act ”); where a power to issue

a notification is conferred under an Act, then that power includes a power, exercisable in the like manner and subject to the like sanctions and conditions (if any), to add to, amend, vary or rescind any such notification so issued. A similar provision is also contained in Section 21 of the [Federal] General Clauses Act 1897. Therefore, in the absence of any provision in the Act that either expressly or by necessary implication prohibits the issuance of an addendum to a notification issued under Section 4, the District Collector is found to have the lawful authority, by virtue of Section 20 of the 1956 Act, to issue an addendum to the notification issued under Section 4 of the Act, as in the instant case, provided it was issued in the like manner and subject to the like sanctions and conditions under Section 4 of the Act.

(ii)…an addendum or corrigendum to a notification under Section 4 cannot be issued after a notification under Section 5 or Section 17(4) of the Act has been issued pursuant to the said notification under Section 4, though fresh acquisition proceedings can be initiated by issuing a fresh notification under Section 4 of the Act if some more land is needed or likely to be needed later for the same purpose. This is because the next step after the issuance of a notification under Section 4 in an acquisition proceeding, …, is either to issue a notification under Section 5 in the ordinary acquisition process or to issue a notification under Section 17(4) for urgent acquisition of the land. After the issuance of a notification either under Section 5 or under Section 17(4), the same acquisition proceeding cannot revert to the initial stage of issuing a preliminary notification under Section 4 of the Act. An addendum or corrigendum to a notification under Section 4 can thus only be issued before the next step in the acquisition process is undertaken i.e. before the issuance of a notification under Section 5 or under Section 17(4) of the Act.

(iii)…the acquisition process cannot be initiated, formalized and then concluded unless a notification under Section 4 of the Act notifying the complete and final land to be acquired is issued. Hence, it follows that the date of the notification issued under Section 4 will not necessarily be the date of the first notification issued under the said provision, instead, it will be whenever the complete and final land is notified. In instances where addendums or corrigenda to a notification under Section 4 are issued, the indicator of the finality of the land notified would be when, after the issuance of an addendum or corrigendum, the public functionaries move forward with the acquisition proceedings by either issuing a notification under Section 5 or under Section 17(4) of the Act. Therefore, the date of the last addendum or corrigendum issued in relation to the notification under Section 4 of the Act before any step is taken to advance the acquisition proceedings to the next stage, is deemed to be the date of the notification under Section 4 of the Act for the purposes of the acquisition proceedings under the Act. This is because the complete land under the said provision becomes finally notified through the addendum or corrigendum and, after this, the state functionaries take the next step in the acquisition proceedings.

(iv)…the issuance of an addendum notification would also affect the date of the publication of the notification under Section 4 that is referred to in Section 23(1)

of the Act. The provisions of Section 23(1) of the Act prescribe that in determining the amount of compensation to be awarded for the land acquired, the market value of the acquired land at the date of the publication of the notification under Section 4 shall be taken into consideration. Since a notification under Section 4 becomes complete on the date when the complete and final land is notified thereunder, it is the date of the publication of the addendum or the corrigendum, or the last addendum or corrigendum if there are more than one, by virtue of which the complete land is finally notified, that is to be taken as the date of the publication of the notification under Section 4 referred to in Section 23(1) of the Act for the purposes of considering the market value of the acquired land while determining compensation.

Conclusion: (i) The District Collector has lawful authority to issue an addendum to a notification already issued under section 4 of the Land Acquisition Act, 1894.
(ii) An addendum to a notification under section 4 of the Land Acquisition Act, 1894 cannot be issued after a notification under section 5 or section 17(4) of the Act has been issued.
(iii) The date of the last addendum or corrigendum issued in relation to the notification under Section 4 of the Act is deemed to be the date of the notification under Section 4 of the Act for the purposes of the acquisition proceedings under the Act.
(iv) The date of the publication of the addendum notification is to be taken as the date of the publication of the notification under Section 4 referred to in Section 23(1) of the Act for the purposes of considering the market value of the acquired land while determining compensation.

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8. **Supreme Court of Pakistan**
Federal Board of Revenue v. Dewan Salman Fiber Ltd and others
Civil Appeals No.1089 to 1090 of 2015
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Munib Akhtar, Mr. Justice Yahya Afridi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1089_2015.pdf

Facts: Through these civil appeals the petitioner sought leave against the impugned judgement of High court against them, whereby company/respondent no.1 had challenged certain exemption notifications which had been issued in respect of sales tax, excise duty and customs duty.

Issues: i) Whether benefit conferred by section 6 of the Protection of Economic Reforms Act, 1992 is to be measured against the definition of economic reforms and whether it can be altered to the disadvantage of the investors?
ii) Whether fiscal regime is the bottom line for a business?
iii) Whether courts of law in a company's tax situation must consider and apply each tax and regime created thereby in its own context?
iv) Whether section 6 of the Protection of Economic Reforms Act, 1992 intended to provide protection to investors as regards fiscal incentives for investment?

v) Whether section 6 of the Protection of Economic Reforms Act, 1992 is surrounded by "penumbra"?

vi) Whether objectives sought to be achieved by the Protection of Economic Reforms Act, 1992 are policy guidelines or general declarations of executive intent?

Analysis: i) The benefit conferred by s.6 of the 1992 Act is to be measured against the definition of "economic reforms". It will be noted that s.6 speaks of "fiscal incentives for investment". The definition of "economic reforms" makes express reference to "fiscal incentives for industrialization". When there is a combined reading of s.2(b) and s. 6, in our view, two points emerge. Firstly, s.6 applied only to those laws, regulations etc. as were announced, promulgated or implemented on and after 07.11.1990. As presently relevant, this meant that it applied to those notifications as were issued on or after the said date. Secondly, s.6 applied only to such notifications as contained time-bound provisions. This is clear not merely from the words "for the term specified therein" as used in the section, but also on an examination of the two notifications specifically listed in the Schedule. One was under the Income Tax Ordinance, 1979, i.e., related to direct taxation whereas the other was under the 1969 Act, i.e., was in respect of an indirect tax. Both had a specific (and the same) period, 01.12.1990 to 30.06.1995, for the setting up of the industry. The notification under the 1969 Act applied also to "expansion or balancing, modernization and replacement of existing units"...If a notification complied with the terms identified in the last preceding para, it came within the scope of s.6. It could not then be "altered to the disadvantage of the investors".

ii) Now it is not at all surprising that a business concern looks at the fiscal regime (both direct and indirect taxation) in which it operates holistically and commercially. For a business it is the bottom line that matters, and when so viewed it will in variably look at the entirety of its tax situation, tending to take and treat it as a whole. Obviously, this would apply equally to any exemptions and /or other tax benefits or advantages that may be in the field.

iii) There may even be specific linkages and overlapping created in the statutes themselves. However, in the end it must be kept in mind that the statutes are discrete and separate. It is therefore not an approach open to a Court of law to take a company's tax situation in its entirety and view it commercially, treating it simply as one whole. Each tax and the regime created thereby (including exemptions and /or other tax benefits and advantages) must be considered and applied in its own context unless some other approach is required or permitted by the terms of the statute itself, whether expressly or by necessary implication.

iv) The foregoing discussion has a direct bearing on how s.6 is to be applied. The section is undoubtedly intended to provide powerful protection to investors as regards fiscal incentives for investment. In the end however, each notification that is sought to be given the cover of s.6 must be shown, in and of itself, to come within the scope thereof. If two or more notifications are so covered, then it may

be permissible to read them together in order to determine whether the fiscal incentives conferred by any one of them are being altered to the disadvantage of the investors.

v) A notification within the scope of s. 6 cannot, by some sort of fiscal adhesion/ cohesion (as it were), pull into the section's orbit that which could not of itself find a place therein. There is, in other words, no "penumbra" surrounding the section.

vi) It must also be remembered that the objectives sought to be achieved by the 1992 Act are not policy guidelines or general declarations of executive intent. The 1992 Act is a statute, which is to be understood and applied in accordance with well established principles of statutory interpretation.

Conclusion: i) Yes**,** benefit conferred by section 6 of the Protection of Economic Reforms Act, 1992 is to be measured against the definition of economic reforms and it cannot be altered to the disadvantage of the investors.

ii) Yes, fiscal regime is the bottom line for a business.

iii) Yes, courts of law in a company's tax situation must consider and apply each tax and regime created thereby in its own context.

iv) Yes, section 6 of the Protection of Economic Reforms Act, 1992 intended to provide protection to investors as regards fiscal incentives for investment.

v) Section 6 of the Protection of Economic Reforms Act, 1992 is not surrounded by "penumbra".

vi) Objectives sought to be achieved by the Protection of Economic Reforms Act, 1992 are not policy guidelines or general declarations of executive intent.

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9. **Supreme Court of Pakistan**
Ex. Col. Muhammad Azad Minhas, Col. Inayatullah Khan and another v. Federation of Pakistan through Secretary Ministry of Defence etc.
Civil Appeal No. 1191 of 2016 and Constitution Petition No. 18 of 2000
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1191_2016.pdf

Facts: The appellant/petitioner filed Constitution Petition before this Court under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973, challenging the validity of their arrest, detention and trial by the Field General Court Martial but the same stood dismissed. They were dismissed from service and to further suffer rigorous imprisonment for two years & four years respectively. Their conviction was also confirmed by the Chief of Army Staff. Both of them filed appeals before the Court of Appeal but the same were also dismissed. Pursuant to the conviction, their membership in the Army Officers Housing Scheme for allotment of a house at the time of retirement along with allotment of plots in Army Welfare Housing Scheme were ordered to be cancelled. Thereafter, the petitioner filed Writ Petition before the High Court which was dismissed. Being aggrieved by the judgment of

the High Court, and filed Civil Petition before this Court wherein leave was granted.

Issues: i) If an act violating any provision of Pakistan Army Act, 1952 is committed by the army personnels, whether the same would be exclusively dealt with by the provisions contained in the aforesaid Act, 1952?
ii) Whether an accused person under the Pakistan Army Act can be convicted for an alternative charge/offence in case the principal charge/offence is not proved?
iii) Whether constitution petitions before the Supreme Court and the High Court are maintainable against any order passed or sentence awarded during a Court Martial or other forums under the Pakistan Army Act, 1952?
iv) Whether an enforceable right becomes unenforceable if petitioner fails to enforce such right within the time stipulated by law?
v) Whether after dismissal from service, the army personnel are still entitled for the privileges?

Analysis: i) The plain reading of the section 2 of Act, 1952, depicts that the persons subject to Pakistan Army Act, 1952, either in any of the capacity as an officer, junior commissioned officer or warrant officer during service at the relevant point of time are subject to Pakistan Army Act, 1952, and whenever an act violating any provision of said enactment is committed by them, the same would be exclusively dealt with by the provisions contained in the aforesaid Pakistan Army Act, 1952. The enactment referred above does not disclose any exception to the general principle that any serving officer of military if found violating the law relating to its discipline would be dealt otherwise except under the Pakistan Army Act, 1952. All the grievances of the appellant/petitioner regarding their apprehension, custody and prosecution before the Field General Court Martial are the steps, which can be taken by the order of the Commanding Officer subject to receipt of tangible information regarding the violation of any provision of Pakistan Army Act, 1952. In Ex. Gunner Muhammad Mushtaq Vs. Ministry of Defence (2015 SCMR 1071), this Court held the custody, trial and conviction of the accused army personnel by the Field General Court Martial to be held in accordance with law. A military officer of either of the rank is under bounden duty to execute momentary obligations assigned or not in order to uphold dignity, reputation, discipline and above all maintain order of the institution in letter and spirit. Any act or omission, which hampers integrity/discipline of the institution would definitely be accountable considering it an act triable under the Army Act.
ii) The concept of alternative charge is not unknown in the sphere of Pakistan Army Act. Sections 111(5) of the Pakistan Army Act and Rules 21(4) and 51(7) & (8) speak about the framing and punishment of an accused under alternative charge/offence. It is now well settled without second thought that if an accused is charged with one offence but from the evidence it appears to have committed a different offence for which he might have been charged under the said provisions of law, he may be convicted for the offence he is found to have committed, although he was not charged with the same. The concept of conviction under

alternative charge in the absence of conviction under the main charge is a well established/recognized principle of criminal justice system as provided in Sections 236 to 240 of the Code of Criminal Procedure. In Jiand Vs. The State (1991 SCMR 1268), this Court held that cumulative effect of Sections 236/237 Cr.P.C. is that if an accused is charged with one offence but from the evidence it appears to have committed an alternative offence for which he might have been charged under the provisions of that section, he may be convicted for an offence which he is shown to have committed, if supported by record, although he was not charged with the same. Even this aspect is not absolute, in absence of any alternative charge he can be convicted for any offence if it covers the ingredients of said offence.

iii) Although powers conferred upon Supreme Court and the High Courts under Articles 184 (3) and 199 of the Constitution are distinct but an aggrieved party, whose fundamental rights have been infringed, can knock the doors of the Court for redressal of its grievances. However, it is also settled that any order passed or sentence awarded during a Court Martial or other forums under the Pakistan Army Act, 1952, is subject to judicial review both by the High Courts and the Supreme Court only on the ground of mala fides including malice in law, without jurisdiction or coram non judice. Before invoking the jurisdiction of this Court or the High Court, the test to pass is strictly confined as to whether the order/sentence passed during Court Martial is suffering from mala fides, without jurisdiction andcoram non judice.

iv) It is established principles that delay defeats equity and equity leans in favour of vigilant. Any person may have an enforceable right but if he fails to enforce such right within the time stipulated by law then the right becomes unenforceable. Law of limitation is not considered a mere formality and is required to be observed being of mandatory nature. Law of laches takes away right of the party to have the right enforced, which otherwise, is enforceable under the law because law requires that one having an enforceable right should seek enforcement whereof within time specified by law. Although as a general principle bar of limitation is not applicable to the proceedings under Article 199 and 184 of the Constitution but insistence is placed on initiating proceedings promptly and within a reasonable time to avoid the question of laches.

v) It is settled that dismissal from service squarely takes away all the perks, privileges and amenity services from an army personnel conferred in lieu of his induction into the Pakistan Army. All these benefits are subject to service and any action contrary to service structure takes away not only perks and privileges rather the privilege of salary, pension, gratuity etc. for which he was otherwise entitled.

Conclusion: i) If an act violating any provision of Pakistan Army Act, 1952 is committed by the army personnel, the same would be exclusively dealt with by the provisions contained in the aforesaid Act, 1952.

ii) An accused person under the Pakistan Army Act can be convicted for an alternative charge/offence in case the principal charge/offence is not proved.

iii) Constitution petitions before the Supreme Court and the High Court are maintainable against any order passed or sentence awarded during a Court Martial or other forums under the Pakistan Army Act, 1952 only on the ground of mala fides including malice in law, without jurisdiction or coram non judice.
iv) Any person may have an enforceable right but if he fails to enforce such right within the time stipulated by law then the right becomes unenforceable.
v) It is settled that dismissal from service squarely takes away all the perks, privileges and amenity services from an army personnel conferred in lieu of his induction into the Pakistan Army.

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10. **Supreme Court of Pakistan**
Federal Public Service Commission through its Chairman, Islamabad and another v. Shiraz Manzoor and others
Civil Petitions Nos.2347 to 2360 of 2022
Mr. Justice Umar Ata Bandial HCJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2347_2022.pdf

Facts: Through all these petitions, the Federal Public Service Commission has sought leave against the consolidated judgment of the Federal Service Tribunal, Islamabad whereby appeals of the respondents were allowed

Issues: i) Which law regulates and governs the terms and conditions of service of the employees of the Federal Service Tribunal?
ii) Whether promotion or the rules which determine the eligibility criteria for promotion is vested right of an employee and the same can be claimed with retrospective effect?
iii) When formulation and creation of a recruitment policy can be subjected to judicial scrutiny?

Analysis: i) The Tribunal was established under the Federal Service Tribunals Act, 1973 ('FST Act') and the terms and conditions of the service of its employees are regulated and governed under the Civil Servants Act 1973 ('Act of 1973') read with the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973 ('Rules of 1973'). (…) The competent authority, in exercise of powers conferred under the Act of 1973 and the Rules of 1973, made rules with the concurrence of the Establishment Division, Finance Division and the Commission, whereby conditions were prescribed regarding the method, qualifications and manner for appointment against various posts, including the post of the 'Reader'. The said rules were notified and published in the official gazette vide SRO No.338(i)/2009 dated 14.4.2009 ('SRO of 2009'). (…) The Act of 1973 read with the rules framed by the competent authority regulate and governs the terms of conditions of service and it includes prescribing the mode of appointment, transfer, posting, eligibility for promotion, seniority etc.
ii) It is settled law that there is no vested right in promotion nor the rules which determine the eligibility criteria for promotion. It is within the exclusive domain

of the competent authority to make rules in order to raise the efficiency of the employees in particular and the service in general. Promotion is neither a vested right nor could it be claimed with retrospective effect. An employee may claim under the relevant law/rules to be considered for promotion when cases of other similarly placed employees are taken up but cannot compel the employer department to fill the promotion post nor to keep it vacant or under consideration.
iii) The competent authority is empowered to prescribe criteria and conditions relating to eligibility for promotion. The formulation and creation of a recruitment policy falls within the exclusive domain of the competent authority, and it cannot be subjected to judicial scrutiny unless it infringes vested rights or is in violation of the law. Every recruitment and selection process formulated by the competent authority is presumed to be regular and aimed at choosing the most suitable person for a given position. The recruitment and selection policy formulated by the competent authority cannot be substituted by a court or tribunal, nor questioned, unless its implementation infringes vested rights or is in violation of the law.

Conclusion: i) The Civil Servants Act 1973 read with the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973 and SRO of 2009 regulate and govern the terms and conditions of service of the employees of Federal Service Tribunal.
ii) Promotion and the rules which determine the eligibility criteria for promotion are neither a vested right of an employee nor could it be claimed with retrospective effect.
iii) The formulation and creation of a recruitment policy falls within the exclusive domain of the competent authority, and it cannot be subjected to judicial scrutiny unless it infringes vested rights or is in violation of the law.

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11. **Supreme Court of Pakistan**
Collector of Customs, Peshawar v. M/s New Shinwari Ltd. & another
Civil Petition Nos.5671 and 5672 of 2021
Mr. Justice Umar Ata Bandial, HCJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._5671_2021.pdf

Facts: The Collector of Customs has sought leave in both the petitions against the consolidated judgment of the High Court whereby the questions of law proposed through reference applications filed under section 196 of the Customs Act 1969 were answered.

Issues: i) What type of offence falls under section 32 of the Customs Act 1969?
ii) Whether customs authorities can exercise powers in derogation of rules made u/s 219 of the Customs Act 1969?

Analysis: i) Sub-section (1) of Section 32 of the Act of 1969 describes the doing or omitting to do acts in connection with matters of customs, knowing or having reasons to believe to be false, which will constitute an offence under the section. Subsection

(2) and (3) describe two distinct eventualities i.e. where the duties and taxes or charge has not been levied or has been short levied or has been erroneously refunded by reason of some collusion or inadvertence or error or misconstruction, as the case may be. The offence under section 32 of the Act of 1969 is relatable to the duty, taxes or charge which has not been levied or has been short levied or has been erroneously refunded.

ii) The Federal Board of Revenue has framed comprehensive and self-contained rules in exercise of powers conferred under section 219 of the Act of 1969. The rules are explicit and, therefore, they cover almost all aspects of the transit trade between Pakistan and Afghanistan, including the powers and functions of the customs officials. The powers and functions are subject to observance of the said rules which cannot be transgressed by the customs authorities.

Conclusion: i) The offence under section 32 of the Act of 1969 is relatable to the duty, taxes or charge which has not been levied or has been short levied or has been erroneously refunded.

ii) The powers and functions of customs authorities are subject to observance of the rules made u/s 219 of the Customs Act 1969 which cannot be transgressed by the customs authorities.

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12. **Supreme Court of Pakistan**
Government of Pakistan thr. Secretary Interior, etc. v. Zia Ullah Khan and others
Government of Khyber Pakhtunkhwa thr. Chief Secy. Peshawar, etc. v. Zia Ullah Khan and others
Civil Petition No.5633 and 5833 of 2021
Mr. Justice Umar Ata Bandial HCJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._5633_2021.pdf

Facts: The petitioners in both petitions have sought leave against the judgment of the High Court, whereby the proceedings initiated and actions taken by the Prime Minister's Performance, Delivery Unit ('Unit') and Pakistan Citizen's Portal ('Portal') have been declared as unconstitutional.

Issue: Whether Prime Minister's Performance, Delivery Unit or Pakistan Citizen's Portal exercises any power that would amount to prejudicing the rights of the citizens or treated as interference in the executive domain of the province?

Analysis: The Unit and the Portal merely receive complaints and they are automatically transmitted to the concerned authorities for consideration. Neither the Unit nor Portal exercises any power that would amount to prejudicing the rights of the citizens or treated as interference in the executive domain of the province. The transmission of information to the concerned authorities of a province, by no stretch of imagination, can be construed as interference or transgression in its domain. After receiving the information transmitted by the Unit or the Portal as

the case may be, the concerned provincial authorities are expected to consider the same and thereafter proceed in accordance with the law. They are not bound to act in a particular manner nor can any direction or order be passed by the Unit or the Portal.

Conclusion: Neither Prime Minister's Performance, Delivery Unit nor Pakistan Citizen's Portal exercises any power that would amount to prejudicing the rights of the citizens or treated as interference in the executive domain of the province.

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13. **Supreme Court of Pakistan**
Col. (Rtd.) Subh Sadiq Malik v. The State through Chairman, NAB, Islamabad
Criminal Petition No.806 of 2022
Robina Farooq v. The State through Chairman, NAB, Islamabad
Criminal Petition No.689 of 2022
Mr. Justice Umar Ata Bandial, HCJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._806_2022.pdf

Facts: The petitioners were working in the National Accountability Bureau. The High Court, in its judgment, recorded observations regarding the shortcomings and flaws while conducting the proceedings at the stages of investigation and inquiry. The petitioners sought leave being aggrieved due to the strictures recorded by the High Court.

Issue: Whether strictures recorded by a High Court against government servants infringe their right to fair trial hence, not sustainable?

Analysis: Strictures recorded by a High Court against an employed person who is subject to disciplinary proceedings are likely to prejudice the latter's right to a fair trial. The strictures recorded by the High Court in the case in hand are in the nature of condemning the petitioners unheard since they were not served with any notice nor did they have an opportunity to put up a defense. The High Court had highlighted the shortcomings and grave flaws relating to the manner in which the investigations had been conducted. Judicial precaution and propriety required restraint to have been shown by the High Court in recording of observations regarding the conduct, behavior and integrity of the petitioners. The decision whether to proceed against the petitioners should have been left to the competent authority of the Bureau because there was no reason to presume that the latter, after taking into consideration the observations made by the High Court regarding the investigations, would not have acted in accordance with law. The strictures recorded by the High Court against the petitioners, therefore, infringed their right to a fair trial and are thus not sustainable.

Conclusion: Strictures recorded by a High Court against government servants infringe their right to a fair trial hence, not sustainable.

14. **Supreme Court of Pakistan**
Commissioner Inland Revenue, Chenab Zone, RTO, Faisalabad v. M/s Rose Food Industries, Faisalabad & another
Civil Petition No.1345-L of 2021
Mr. Justice Umar Ata Bandial, HCJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1345_l_2021.pdf

Facts: Sales Tax Department after re-examination of record of the respondent passed an order without issuing fresh show cause notice. The appeal of respondent was accepted by the Tax Tribunal holding that issuance of fresh show cause notice was mandatory. The petitioners filed reference under section 47 of the Sales Tax Act, 1990 before the High Court which was dismissed. Now, petitioners have filed leave to appeal under Article 185(3) against the decision of High Court.

Issues: i) Whether issuance of a show cause notice is the most crucial in the context of a fair trial and due process?
ii) Whether principles of fairness and due process are an integral part of the fundamental right guaranteed under Article 10-A of the Constitution of the Islamic Republic of Pakistan?

Analysis: i) The issuance of a show cause notice is the most crucial in the context of a fair trial and due process. It enables a tax payer to precisely know what allegations are to be met, explained and answered to the satisfaction of the adjudication officer. It is the duty of the Department to ensure that a show cause notice is issued after a proper inquiry and investigation. It should be manifest from the contents of the show cause notice that it was issued after ascertaining the facts and the allegations are not vague or ambiguous. The charges or allegations should be specific; otherwise the taxpayer would be prejudiced and denied the right to a fair trial.
ii) The principles of fairness and due process are an integral part of the fundamental right guaranteed under Article 10 A of the Constitution. It guarantees that every person is entitled to a fair trial and due process for determination of rights and obligations.

Conclusion: i) The issuance of a show cause notice is the most crucial in the context of a fair trial and due process.
ii) The principles of fairness and due process are an integral part of the fundamental right guaranteed under Article 10-A of the Constitution.

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15. **Supreme Court of Pakistan**
Director General Central Directorate of Savings. & others v. Abid Hussain and others
Civil Appeal No.23 and 24 of 2017
Mr. Justice Umar Ata Bandial, HCJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.a._23_2017.pdf

Facts: The National Saving Centre deducted the withholding tax relating to the certificates of the respondents under Income Tax Ordinance, 2001. The respondents filed Writ Petition before the High Court on the grounds that prior to 25th Constitutional Amendment, Kuram Agency was part of Tribal Areas and Income Tax Ordinance had not been extended in Tribal Areas. Their Writ Petition was dismissed, but, their, Intra Court Appeal was allowed. Now, appellants have filed leave to appeal under Article 185(3) against the order of learned High Court.

Issue: Whether it is mandatory statutory obligation of the payers of the profit to deduct tax from the gross amount of the yield or the profit paid to the recipient?

Analysis: Clause (a) of sub-section 1 of section 151 of the Income Tax Ordinance of 2001, inter alia, provides that where a person pays yield on an account, deposit or a certificate under the National Savings Scheme or Post Office Savings Account, then it becomes a mandatory statutory obligation of the payers of the profit to deduct tax at the rate specified in Part III of the First Schedule from the gross amount of the yield or the profit paid to the recipient.

Conclusion: It is mandatory statutory obligation of the payers of the profit to deduct tax from the gross amount of the yield or the profit paid to the recipient.

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16. **Supreme Court of Pakistan**
The State thr. Director A.N.F. Peshawar v. Shereen Shah and another
The State thr. Director A.N.F. Peshawar v. Hanif Gul Jadoon, decd. thr. LRs and others
Force Commander ANF, Peshawar v. Rahim and others
Federal Govt./State through ANF, Peshawar v. Haji Umar Afridi decd. thr. LRs and others
Federal Govt./State through ANF, Peshawar v. Gul Anwar and others
The State thr. Director A.N.F. Peshawar v. Malik Gul Bahadur decd. thr. LRs and others
Civil Petition Nos.388-P, 389-P, 395-P, 396-P, 397-P & 399-P of 2016
Mr. Justice Umar Ata Bandial, HCJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._388_p_2016.pdf

Facts: The Anti-Narcotics Force filed a complaint under the Prevention of Smuggling Act 1977. It was heard by a Special Judge, Customs, Taxation, and Anti-Smuggling. An appeal was preferred before the Special Appellate Court, which was allowed. The Anti-Narcotics Force then approached the High Court for relief under Article 199 of the Constitution. The High Court dismissed the petitions, stating that it couldn't grant a writ because the Special Appellate Court, presided over by a High Court Judge, didn't qualify as a "person" under Article 199(5) of the Constitution.

Issues: i) Who possesses the authority to designate Special Judges and Special Appellate Courts in accordance with the Prevention of Smuggling Act 1977 and delineate their territorial jurisdiction?

ii) Who presides over a Special Appellate Court established under the Act of 1977 and whether such court performs judicial functions as High Court?

iii) What is the status of such Special Appellate Court and how it is different from High Court?

iv) What is the status of Presiding Officer of Special Appellate Court created under the Act of 1977?

v) When writ under Article 199 of the Constitution lies against action of a Judge High Court and against Judgments and orders of Special Appellate Court established under the Act of 1977?

vi) Whether writ under Article 199 of the Constitution lies against orders and judgments of Special Appellate Court established under the Act of 1977?

Analysis: i) …On the other hand, the Federal Government is empowered under section 44 of the Act of 1977 to appoint as many Special Judges as it considers necessary. The place of headquarter of each Special Judge and the latter's territorial limits of jurisdiction are also specified by the Federal Government through a notification. Likewise, the Special Appellate Courts are established by the Federal Government, pursuant to the powers conferred under section 46 of the Act of 1977. The Federal Government has exclusive jurisdiction to specify the place of headquarter and set out its territorial jurisdiction, or specify the class of cases in respect of which each Special Appellate Court shall exercise its jurisdiction. The Special Appellate Court constituted under the Act of 1977 has to be presided over by a person who is a sitting Judge of a High Court. The appointment by the Federal Government is subject to consultation with the Chief Justice of the concerned High Court.

ii) … The Special Appellate Court, established under the Act of 1977, has to be presided over by a Judge of the High Court but it is not a High Court, nor does it perform its judicial functions under the Constitution.

iii) …The Special Appellate Court exercises powers and functions as a special forum and the presiding Judge cannot assume jurisdiction conferred on the High Court. The Special Appellate Court, constituted under the Act of 1977 is, therefore, distinct from the High Court. The former is a creation of a statute while the latter that of the Constitution.

iv) …The jurisdiction, powers and functions of the Special Appellate Court are provided and governed under the Act of 1977. While presiding a Special Appellate Court, the status of its presiding Judge, despite being a sitting Judge of the High Court, is that of a *persona designata* and not as a Judge of the High Court. The presiding Judge of the Special Court is no more than an individual as opposed to a Judge ascertained as a member of the High Court.

v) … It is settled law that the action of a Judge, which relates to the performance of the latter’s duties and functions as a Judge of the High Court, or as a member

thereof, cannot be brought under challenge under Article 199 of the Constitution. Every action of a Judge of a High Court, performing functions and exercising powers and jurisdiction as a *persona designata* are amenable to the jurisdiction of the High Court under Article 199 of the Constitution. The competence of a High Court to issue a writ to a Judge of the High Court in his personal capacity, or where working as a *persona designata* has been affirmed by a larger bench of this Court consisting of thirteen Judges.

vi) …As a corollary, the acts, orders or judgments of the Appellate Court, established under the Act of 1977, are not immune from the jurisdiction of the High Court under Article 199 of the Constitution because its presiding Judge performs judicial functions as *persona designata*.

Conclusion: i) The Federal Government is empowered under the Act of 1977 to appoint Special Judges and establish Special Appellate Courts by appointing sitting Judge of a High Court with consultation of Chief Justice of that High Court. Likewise Federal Government has power to specify their territorial jurisdiction.

ii) A Special Appellate Court under Act of 1977 is presided over by a sitting Judge of High Court and does not performs judicial functions as a High Court.

iii) Special Appellate Court is a special forum being creation of a statute whereas High Court is creation of the Constitution.

iv) Status of its presiding Judge, despite being a sitting Judge of the High Court, is that of a *persona designata* and not as a Judge of the High Court.

v) Writ under Article 199 of the Constitution does not lie against duties and functions of a Judge High Court being member thereof, whereas every action of a Judge of a High Court, performing functions and exercising powers and jurisdiction as a *persona designata* are amenable to the jurisdiction of the High Court under Article 199 of the Constitution.

vi) Yes, the acts, orders or judgments of the Special Appellate Court, established under the Act of 1977, are amenable to the jurisdiction of the High Court under Article 199 of the Constitution.

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17. **Supreme Court of Pakistan**
Mohammad Boota (deceased) through L.Rs., and other v. Mst. Fatima daughter of Gohar Ali and others
Civil Appeal No.419 of 2011, Civil Misc. Application No.1839 of 2011 and Civil Appeal No.1184 of 2019
Mr. Justice Umar Ata Bandial, HCJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.a._419_2011.pdf

Facts: This judgment decides the issues raised in the titled civil appeals where the matter in issue is common being succession to tenancy in which the respondents claim their share. The respondents did not appear in either appeals, hence, they were proceeded ex-parte.

Issues: i) What are the circumstances in which application of section 20 and 21 of the

Colonization of Government Lands (Punjab) Act, 1912 can be considered by court?

ii) What is history of enactments of sharia law and whether sharia law was enforced in state of Bahawalpur prior from insertion of section 19-A of the Colonization Act, 1912?

iii) Whether succession of Muslims was governed by sharia law even before 1951?

iv) When limitation would run to file a suit for declaration in case where someone was deprived from right of inheritance?

Analysis: i) The Colonization Act is an Act which provides administration of Government land in Punjab and was made applicable to Bahawalpur in the year 1924, as held in Basher Ahmed and others v. Mst. Fatima Bibi (deceased) through LRs and others (2019 SCMR 99). Tenancy rights were granted in terms of Sections 10, 11 and 15 of the Colonization Act subject to the approval of the government, based on the statement of conditions of tenancy (Sections 10 and 11) and on payment of the purchase money (Section.15). Section 20 of the Colonization Act provides for succession to tenancy where the original tenant dies, by giving male lineal descendants priority over all other categories as listed in this section. Section 21 is made applicable where any male tenant, who is not the original tenant dies, succession then devolves as if the tenancy rights were for agricultural land acquired by the original tenants. Section 21 operates after the death of a tenant who inherited from the original tenant, such that succession for tenancy is deemed as if its agricultural land, so either by custom or by sharia law. 10. The applicability of Sections 20 and 21 of the Colonization Act has been considered by this Court in two cases, which have been cited and relied upon by the parties. The first, Mst. Imam Bibi v. Allah Ditta and others (PLD 1989 SC 384) interpreted Section 20 to hold that Imam Bibi could not inherit from her father Nizam Din and that only his son Allah Ditta would inherit the tenancy. As per the judgment Nizam Din died before Section 19-A was inserted in the Colonization Act and became applicable to the State of Bahawalpur. Therefore, in terms of the Imam Bibi case, Section 20 of the Colonization Act applied to cases of succession from the original tenant until the insertion of Section 19-A in the Colonization Act. The second case Umar Din and another v. Mst. Sharifan and another (PLD 1995 SC 686) describes that Muhammad Ibrahim, the original tenant died and his rights devolved upon his three sons in 1948; one of his sons died leaving behind a daughter and a widow, on whom his tenancy rights devolved. The two sons of Muhammad Ibrahim challenged succession in favour of the daughter and the widow and ultimately, the Court ruled that as per Section 21(b) of the Colonization Act, the daughter would inherit, as the tenancy rights were not of the original tenant but from a tenant who had acquired rights from the original tenant. In terms of Section 21(b) of the Colonization Act, the daughter was able to inherit in the tenancy of her father because succession was not from the original tenant and so Section 20 was not applicable. Under Section 21(b) of the Colonization

Act, female legal heirs could inherit based on custom or sharia law, as the case may be.

ii) To appreciate the legal question on the applicability of sharia law, a look at the historical background is relevant. Pakistan gained independence in 1947 and Bahawalpur acceded to Pakistan in October, 1947 by signing the Instrument of Accession.1 Bahawalpur enjoyed a degree of autonomy as a separate state with its own government, legislature and judiciary until 1955 under the Instrument of Accession. In 1955, Bahawalpur merged with West Pakistan under the Establishment of West Pakistan Act, 1955. After the abolition of the one unit scheme in 1970, Bahawalpur became a district of the Punjab and remains the same to-date. So far as the applicability of sharia law, before 1947 (pre-partition) the Act of 1872 declared certain rules, laws and regulations to have the force of law in Punjab under the provisions of Section 25 of the Indian Councils Act, 1861. Section 5 of the Act of 1872 provided that in matters regarding succession, marriage, divorce, dower amongst other personal law matters, the rule of decision was that either a custom was applicable to the parties or in the case of muslims sharia law and in the case of hindus, hindu law… This law recognized the force of custom applicable to parties which was not contrary to justice, equity or good conscience and essentially required parties to establish that a particular custom was applicable to them for decisions on personal law matters. Section 5 of the Act of 1872 was repealed by the Muslim Personal Law Shariat Application Act, 1937 (1937 Shariat Act) which provided that notwithstanding any custom or usage regarding succession, the rule of decision where the parties are muslim shall be based on sharia law. The exception created by way of Section 2 of the 1937 Shariat Act to sharia law was succession relating to agricultural land, meaning that in all other cases succession was governed by sharia law but in cases involving agricultural land customary law prevailed. After 1947 (after partition), the 1948 Shariat Act was promulgated on 15.3.1948 being an Act to provide for the application of sharia law on matters related to personal law, where the parties were muslims. Section 2 provided that notwithstanding any custom or usage to the contrary all questions regarding succession, including succession to agricultural land in cases where parties are muslim shall be decided as per sharia law. In terms of Section 4 of the 1948 Shariat Act, Section 5 of the Act of 1872 was applicable to the extent that it was not in conflict with the 1948 Shariat Act. Therefore, in terms of the 1948 Shariat Act, sharia law prevailed for the purposes of succession where the parties were muslim. The aforementioned Act was amended by the 1951 Shariat Act on 10.03.1951 whereby it clarified through an amendment to Section 2 in the Punjab Act IX of 1948 that the rule of decisions in matters of personal law which included succession was sharia law where the parties were muslims. At the same time on 04.03.1951, the Bahawalpur Muslim Personal Shariat (Application) Act, 1951 was promulgated which made sharia law applicable to muslims in the State of Bahawalpur on matters of personal law including succession were governed by sharia law. Subsequently, the West Pakistan Muslim Personal Law (Shariat) Application Act, 1962 (1962 Shariat

Act) was promulgated on 31.12.1962 which again made sharia law applicable to muslims in personal law matters. This Act repealed the 1937 Shariat Act, the 1948 Shariat Act and the 1951 Shariat Act. The 1962 Shariat Act was amended by way of West Pakistan Muslim Personal Law (Shariat) Act (Amendment) Ordinance, 1983 with the insertion of Section 2-A… This section gave finality to the understanding that where the parties were muslim, in the context of succession, only sharia law was applicable. Section 2-A settled the matter to the effect that in matters of inheritance the rule of law shall always be sharia law. In the case of Ghulam Haider and others v. Murad through Legal Representatives and others (PLD 2012 SC 501), this Court while examining the scope, effect and application of Section 2-A of the 1962 Shariat Act held that the purpose of this section was to ensure compliance with sharia law even prior to 1948 so as to put an end to all controversies and litigation in respect of succession prior to the 1948 Shariat Act so as to hold for all times to come that succession will be governed under Section 2-A ibid. As to the applicability of the 1962 Shariat Act, this Court in the cases of Hakim Ali and others v. Barkat Bibi and others (1988 SCMR 293) and Muhammad Yousaf v. Karam Khatoon (2003 SCMR 1535) has held that the Act will apply retrospectively, due to the clear language of Section 2-A. Hence, as per the dicta of this Court, even prior to 1951 (when Section 19-A was inserted in the Colonization Act), sharia law was enforced in the State of Bahawalpur.

iii) In the context of the aforementioned Shariat Application Acts, succession for the purposes of muslims was governed by sharia law even before 1951 unless any custom was established as being consistently prevalent in the area and applicable to the parties. Even Section 5 of the Act of 1872 did not exclude sharia law from applying on personal law matters, provided a custom, not contrary to justice, equity and good conscience was established. The 1948 Shariat Act clarified that muslim personal law was applicable for the purposes of succession notwithstanding any custom meaning that all decisions regarding succession were governed by sharia law. The 1948 Shariat Act was applicable to the State of Bahawalpur where the rule of decision for the purposes of succession was sharia law as has been held in the case Government of Pakistan v. Brig. His Highness Nawab Muhammad Abbas Khan abbasi and others (PLD 1982 SC 367). The significance of the 1948 Shariat Act is that it categorically provides that sharia law shall prevail notwithstanding any custom or usage to the contrary in matters of succession. Hence, without a doubt even prior to 1951, sharia law was applicable to muslims on matters of succession. The issue of the applicability of sharia law prior to 1951 has been examined by this Court in various different decisions. In the case of Muhammad Yousaf v. Karam Khatoon (2003 SCMR 1535) Section 5 of the Act of 1872 was examined in the context of prevailing customs in the State of Bahawalpur and this Court concluded that prior to 1951 if a party were to rely on a particular custom negating sharia law, then the burden was on that party to establish the custom and its applicability to their case because even Section 5 did not exclude sharia law. The Court concluded that the issue of proving the custom was a question of fact based on evidence. In the case of Abdul

Ghafoor and others v. Muhammad Shafi and others (PLD 1985 SC 407) this Court held that Section 2-A of the 1962 Shariat Act was applicable to a period prior to 1948 and the question of retrospectivness was not relevant because the provisions of the section itself state that it was applicable prior to the commencement of the 1948 Shariat Act. Hence, for all intent and purposes after 1948, sharia law was clearly applicable in the State of Bahawalpur on the basis of which the rights of inheritance were to be determined. Therefore, based on the aforesaid, to answer the question raised we find that even prior to March 1951, sharia law was applicable in Bahawalpur to muslims on account of the 1948 Shariat Act which means that even in the presence of a custom or Section 20 of the Colonization Act sharia law will prevail.

iv) Article 120 of the Limitation Act, 1908 deals with the limitation to file a suit for declaration which has been interpreted by this Court in its recent judgment Saadat Khan and others v. Shahid-urRehman and others (PLD 2023 SC 362) where the Court has held that in the cases where brothers deny their sisters their right to inherit, limitation would run from the date of knowledge when the fraud or denial became known to the sisters… However, even to this effect this Court has held in Mst. Gohar Khanum and others v. Mst. Jamila Jan and others (2014 SCMR 801) that where a mutation is erroneously made in favour of a male heir, such mutation would not create title in favour of the male heir if it is contrary to sharia law of inheritance. In another case Shabla and others v. Ms. Jahan Afroz Khilat and others (2020 SCMR 352), this Court has held that no limitation runs against matters involving inheritance rights of a female where she has been defrauded of her right by her family. It has also been held in Khan Muhammad through LRs. and others v. Mst. Khatoon Bibi and others (2017 SCMR 1476) that in cases of inheritance, it is well settled that a claimant becomes a co-owner/cosharer of the property left by the predecessor on his death and the sanction of inheritance mutation is meant for updating the revenue record for fiscal purposes. Where a person has been denied the right of inheritance that would give them cause of action and that no limitation would run against a co-sharer.

Conclusion: i) The circumstances in which application of section 20 and 21 of the Colonization of Government Lands (Punjab) Act, 1912 can be considered by court are mentioned above under analysis No. i.

ii) History of enactments of sharia law is mentioned above under analysis No. ii and sharia law was enforced in state of Bahawalpur prior from insertion of section 19-A of the Colonization Act, 1912.

iii) Succession for the purposes of Muslims was governed by sharia law even before 1951 unless any custom was established as being consistently prevalent in the area and applicable to the parties.

iv) Limitation would run from the date of knowledge when the fraud or denial became known to the party to file a suit for declaration in case where someone was deprived from right of inheritance.

18. **Supreme Court of Pakistan**
Jameel Qadir v. Government of Balochistan, Local Government, Rural Development & Agrovilles Department, Quetta through its Secretary and others
Civil Petitions No.2270 & 2272 OF 2023
Mr. Justice Umar Ata Bandial, HCJ, Mr. Justice Muhammad Ali Mazhar, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2270_2023.pdf

Facts: These Civil Petitions for leave to appeal are directed against the judgments passed by the High Court whereby the orders passed by the Election Commission of Pakistan ("ECP") were set aside with the direction to the ECP to issue notifications for the returned candidates accordingly.

Issues: i) Whether the decision of the Election Tribunal on an election petition shall be final?
ii) What procedure is to be followed by the Election Tribunal appointed to deal with and decide election petitions?
iii) What is the meaning of the term 'jurisdiction' in the legal parlance?
iv) Whether it is the duty of the Court to decide the question of jurisdiction in case of doubts raised regarding jurisdiction?
v) What is the meaning of expression 'coram non judice'?
vi) When the decision of a Court becomes per incuriam?
vii) What is the purpose of the doctrine of exhaustion of remedies?
viii) What is the meaning of term functus officio?

Analysis: i) Sub-section (2) of Section 41of Balochistan Local Government Act, 2010 articulates that the decision of the Election Tribunal on an election petition shall be final and shall not be called into question in any court or before any other authority. If we look at the parallel and corresponding provision, that is Section 139 of the Elections Act 2017, it also provides that no election shall be called into question except by an election petition filed by a candidate for that election and under Section 140, the composition of the Election Tribunal is laid out for election to an Assembly or the Senate, or in the case of election to a local government.
ii) In Rule 78 of the Balochistan Local Government (Election) Rules, 2013, a detailed procedure is provided which is to be followed by the Election Tribunal appointed to deal with and decide election petitions.
iii) The term 'jurisdiction' in the legal parlance means the command conferred to the Courts by law and Constitution to adjudicate matters between the parties. The jurisdiction of every Court is delineated and established to adhere to and pass legal orders. Transgressing or overriding the boundary of its jurisdiction and authority annuls and invalidates the judgments and orders.
iv) It is the prime duty of the Court to decide the question of jurisdiction first in case of doubts raised regarding jurisdiction, and in any such situation it is the

responsibility of the Court to endeavor to resolve the issue of jurisdiction at an early stage of the proceedings.

v) The expression 'coram non judice' means an act done by a court which has no jurisdiction. When the suit is brought in a court without jurisdiction it is said to be coram non judice and any judgment is null and void. When a court of general jurisdiction undertakes to grant a judgment in an action where it has not acquired jurisdiction of parties by voluntary appearance or service of process, the judgment is void and may be disregarded and it is 'coram non judice'.

vi) The decision of a Court becomes per incuriam when it is rendered in ignorance of a statute or a rule having the force of statute.

vii) The doctrine of exhaustion of remedies stops a litigant from pursuing a remedy in a new court or jurisdiction until the remedy already provided under the law is exhausted.

viii) The term functus officio literally denotes 'of no further official authority or legal effect' or 'having performed his office', and is used in the context of an officer who is no longer in office or has fulfilled its purpose. This doctrine has an extensive and pervasive application to both the judicial and quasi-judicial authorities and if such doctrine is considered insignificant, it will lead to disorder, therefore, this should be given credence to bring in decisiveness and certitude to legal proceedings.

Conclusion: i) Sub-section (2) of Section 41 of Balochistan Local Government Act, 2010 articulates that the decision of the Election Tribunal on an election petition shall be final.

ii) In Rule 78 of the Balochistan Local Government (Election) Rules, 2013, a detailed procedure is provided which is to be followed by the Election Tribunal.

iii) The term 'jurisdiction' in the legal parlance means the command conferred to the Courts by law and Constitution to adjudicate matters between the parties.

iv) It is the prime duty of the Court to decide the question of jurisdiction first in case of doubts raised regarding jurisdiction.

v) The expression 'coram non judice' means an act done by a court which has no jurisdiction.

vi) The decision of a Court becomes per incuriam when it is rendered in ignorance of a statute or a rule having the force of statute.

vii) The doctrine of exhaustion of remedies stops a litigant from pursuing a remedy in a new court or jurisdiction until the remedy already provided under the law is exhausted.

viii) The term functus officio literally denotes 'of no further official authority or legal effect'.

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19. **Supreme Court of Pakistan**
Market Committee, Multan through its Chairman and another v. Additional Commissioner (Consolidation), Multan and others
Civil Petitions No. 6406 to 6434 of 2021
Mr. Justice Umar Ata Bandial HCJ, **Mr. Justice Muhammad Ali Mazhar**
https://www.supremecourt.gov.pk/downloads_judgements/c.p._6406_2021.pdf

Facts: The above-titled twenty-nine civil petitions for leave to appeal are directed against the common judgment passed by the High Court, whereby the writ petitions filed by the petitioners were disposed of with certain directions to the Chairman, Market Committee.

Issues: i) What is essential purpose of Punjab Agricultural Produce Markets Ordinance, 1978?
ii) What are the most important duties of the Market Committee?
iii) Whether order passed by the Market Committee and Assistant Commissioner are appealable?
iv) How the expression remand can be defined?
v) Whether High Court can adjudicate disputed facts or controversial issues in the Constitutional jurisdiction?
vi) Whether one who approbates can reprobate?
vii) Whether principle of estoppel lies against Government and public bodies?
viii) What is doctrine of acquiescence?

Analysis: i) The purpose of Punjab Agricultural Produce Markets Ordinance, 1978 (the "1978 Ordinance"), is to provide for the better regulation of purchase and sale of agricultural produce and, for that purpose, to establish markets and make rules for their proper administration. According to Section 3 of this Ordinance, the Government may, by notification, declare its intention of exercising control over the purchase and sale of such agricultural produce and in such area as may be specified in the notification. The purpose and rationale of such notification is to invite objections and suggestions which may be received by the District Coordination Officer within the period as may be specified in the notification; thereafter, under Section 4 of the 1978 Ordinance, the notification of the market area is issued. According to Section 5 of the 1978 Ordinance, subject to such rules as the Government may make in this behalf, the Market Committee concerned shall be the authority to issue licences to the dealers and renew such licences… If we go through the scheme of this Ordinance, its essential purpose is not only to help the growers, but also to regulate the trade of various items of agricultural produce and to give protection to the growers from unscrupulous businessmen and to afford them facilities so that they may obtain a fair price for their produce.
ii) The duty of the Market Committee under Section 9 is to provide facilities for persons visiting it in connection with the purchase, sale, storage weighment, pressing and processing of agricultural produce as the Government may from time to time direct and no broker, weighman, measurer, surveyor, warehouseman, changer, palledar, boriota, tola, tokrewala and rehriwala shall, unless duly

authorized by the licence, carry on his occupation in a notified market area in respect of agriculture produce. In line with Section 21 of the 1978 Ordinance, the market fund may be expended for different purposes as jotted down in Section 21 of the Ordinance which, inter alia, includes the acquisition of land for the establishment of a market, or markets…One of the most important duties of the Market Committee is to set up a market for which it may acquire some site, either for a new Market or for extending an existing market and, in order to achieve this purpose meaningfully, the procedure for acquisition of land is also provided under Section 29 of the 1978 Ordinance. Whereas, in exercise of powers conferred under Section 35 of the 1978 Ordinance, the Governor of Punjab was pleased to make the Punjab Agricultural Produce Markets (General) Rules, 1979, in which the duties and powers of the Chairman and Vice Chairman of the Market Committee, as well as the duties and powers of the Market Committee are provided in Rules 14 and 15, respectively and the Chairman is designated as Chief Executive Officer of the Market Committee.

iii) The niceties of Rule 21, enlighten that an order passed by the Market Committee, other than in a service matter, is appealable to the Assistant Commissioner of the respective notified market area, whereas in Sub-Rule (5) a remedy of preferring Revision is also provided against an order passed in appeal by the Assistant Commissioner to the Commissioner of the division concerned.

iv) The expression "remand" connotes that something has to be done by the lower Court or Authority on the subject of the matter remanded to it.

v) Of course in the Constitutional jurisdiction, the High Court cannot adjudicate disputed facts or controversial issues but can examine the exactitudes of the orders assailed before it and after examining the legality and propriety of the impugned orders passed by lower fora.

vi) According to the maxim "qui approbat nonreprobat", one who approbates cannot reprobate.

vii) Concomitantly, the doctrine of estoppel is based on the maxim "allegans contraria non est audiendus", which means a person alleging contradictory facts should not be heard. The plea of estoppel can be entreated to hold the Government to honor its assurances and undertakings, whether executive or administrative. Public bodies are as much obligated as a private person to live up to the promises made by them. Article 114 of the Qanun-e-Shahdat Order, 1984 defines the doctrine of estoppel, under which when a person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. This tenet is set up on the concept of evenhandedness and fairness with a sole intent to prevent fraud.

viii) The doctrine of acquiescence is founded on a conduct in which, if a person spots another person about to commit an act of infringing his rights who might otherwise have abstained from it and causes him to believe that he assents to its

being committed, he cannot afterwards be heard to complain of the act. Under the Doctrine of Acquiescence, as well as the Legal maxim "Qui non negat, fatetur", which denotes that "silence shows consent" (Barb. [N.Y.] 2B, 35) or alternatively, that "He who does not deny, agrees".

Conclusion: i) Essential purpose of the Ordinance, 1978 is not only to help the growers, but also to regulate the trade of various items of agricultural produce.
ii) The most important duties of the Market Committee is to set up a market for which it may acquire some site, either for a new Market or for extending an existing market and other duties mentioned in the Ordinance, 1978.
iii) An order passed by the Market Committee, other than in a service matter, is appealable to the Assistant Commissioner and revision can be filed to the Commissioner against the order passed in appeal by Assistant Commissioner.
iv) The expression remand means something has to be done by the lower Court or Authority on the subject of the matter remanded to it.
v) High Court cannot adjudicate disputed facts or controversial issues in the Constitutional jurisdiction.
vi) One who approbates cannot reprobate.
vii) Principle of estoppel lies against Government and public bodies.
viii) The doctrine of acquiescence is founded on a conduct in which, if a person spots another person about to commit an act of infringing his rights who might otherwise have abstained from it and causes him to believe that he assents to its being committed.

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20. **Supreme Court of Pakistan**
Commissioner Inland Revenue Zone-IV, Large Taxpayer Unit, Karachi v. M/s Al-Abid Silk Mills Ltd. A-39, Manghopir Road, SITE, Karachi
Civil Appeal No. 1032 of 2018
Mr. Justice Umar Ata Bandial HCJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1032_2018.pdf

Facts: Pursuant to the report of the Directorate General of Intelligence and Investigation, the Deputy Commissioner Inland Revenue issued a show cause notice to taxpayer calling upon him to explain as to why his claimed input tax against the alleged fake/flying invoices should not be recovered from him along with the default surcharge and additional tax. Said show cause notice was adjudicated against the taxpayer and his successive appeals before the Commissioner Inland Revenue (Appeals) and the Appellate Tribunal Inland Revenue had respectively been dismissed as well, where-after, the taxpayer's raised questions of law in his application under section 47 of the Sales Tax Act, 1990 had been answered by the High Court against the Department. Hence, this appeal.

Issues: i) Who is liable to pay the output tax and who is entitled & eligible to deduct input tax under the Sales Tax Act, 1990?

ii) Who is liable to discharge the burden to prove that the tax, under the Sales Tax Act 1990, has not been paid?

iii) Whether the legislature intended to reverse the onus of proof in matters relating to the levy, charge and payment of the tax under the Sales Tax Act, 1990?

Analysis: i) The expression 'output tax' has been defined in section 2(20) of the Sales Tax Act 1990 in relation to a registered person as a tax levied under the Act ibid on the supply of goods made by the person. The expression 'input tax' has been defined under section 2(14) of the Act ibid in relation to a registered person as, inter alia, meaning the tax levied under the Act ibid on supply of goods to the person. Section 7 of Act ibid describes the mechanism for determination of the tax liability and provides that, subject to the provisions of section 8 of Act ibid, a registered person shall be entitled to deduct input tax paid or payable during the tax period for the purpose of taxable supplies made or to be made from the output tax.

ii) The scheme of the Sales Tax Act, 1990 clearly envisages that the sales tax authorities are essentially obliged and are vested with wide powers to establish that a person is liable to pay any tax/charge having not been levied/paid or has been short levied. The proceedings before the adjudicating authority or the statutory appellate forum under the Act ibid are quasi-judicial in nature. When the department alleges that a registered person is liable to make the payment of tax and the same has not been levied or charged, the former is burdened with a statutory duty to establish before the adjudicating forum, through persuasive and proper evidence, that the allegations are highly probable to be true, rather than being unreliable, false or doubtful.

iii) In some exceptional cases like Section 187 of the Customs Act, 1969 and section 14 of the National Accountability Ordinance, 1999, the legislature in its wisdom has provided for what is known as reverse onus i.e. placing the burden on the person against whom an allegation has been made. However, in the Sales Tax Act, 1990, there is no provision pari materia with aforementioned provisions of the Customs Act, 1969 and the National Accountability Ordinance, 1999.

Conclusion: i) The liability to pay the output tax is that of a supplier and a person who receives a supply of taxable goods is entitled and eligible to deduct input tax paid on the supply of goods.

ii) The burden to prove that the tax under the Sales Tax Act, 1990, has not been paid, is on the sales tax authorities.

iii) The legislature did not intend to reverse the onus of proof in matters relating to the levy, charge and payment of the tax under the Sales Act, 1990.

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21. **Supreme Court of Pakistan**
Dr. Muhammad Saleem v. Government of Baluchistan and Others
Civil Petition No.1532 of 2022
Mr. Justice Umar Ata Bandial, HCJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1532_2022.pdf

Facts: The petitioner has sought leave to appeal against judgment of the Baluchistan Service Tribunal ('Tribunal'). The respondent was transferred from the post of Principal of *Loralai* Medical College ('College') to the post of Professor (B-20) and Head of Ophthalmology Department, *Bolan* Medical College, while the petitioner replaced him as Principal of the College. The respondent filed a departmental appeal which was rejected by the competent authority and he then preferred an appeal before the Tribunal, which was allowed vide the impugned judgment.

Issues: i)What is the scope of judicial interference with the executive function of postings and transfers of government officials?
ii) Whether the posting and transfer by the competent authority made in the public interest is open to judicial review?

Analysis: i) The transfer of a government official from one place or post to another to meet the exigencies of service was within the exclusive domain and competence of the competent authorities of the executive organ of the State and, ordinarily, it is not amenable to interference except in extra ordinary circumstances.
ii) Utmost caution and restraint ought to be exercised in interfering with or encroaching upon the exclusive domain of the executive authorities. The decisions in connection with posting and transfer of government servant's must not be subjected to judicial scrutiny unless a law has been clearly violated or mala fide and malice is established without the need for making an inquiry.

Conclusion: i) The only scope of judicial interference with the executive function of postings and transfers of government officials is when the terms and conditions of service are not adversely affected
ii) The interference of the Tribunal or courts in matters relating to postings and transfers is an encroachment upon the executive domain and in breach of the seminal principle of separation of powers embedded in the Constitution.

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22. **Supreme Court of Pakistan**
Collector of Customs Port Muhammad Bin Qasim, Karachi v. M/s Mia Corporation (Pvt.) Ltd. Islamabad
Civil Appeal No.1080 of 2011 and CMA No.819 of 2019
Mr. Justice Umar Ata Bandial HCJ, Mrs. Justice Ayesha A. Malik, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1080_2011.pdf

Facts: The respondent filed goods declaration wherein the value was declared. The appropriate officer of customs was not satisfied with the declared value and, therefore, the consignment was provisionally assessed under section 81 of the Customs Act 1969 ("Act of 1969") based on the provisionally assessed value. The final determination was not made by the customs authorities within the time prescribed under section 81 of the Act of 1969 and, therefore, the provisional assessment had become final in terms of sub section 4 ibid. Subsequently, the Directorate of Valuation received a report from M/s SGS regarding the alleged transactional value of the goods imported by the respondent. The latter was, therefore, served with a show cause notice issued under section 32 of the Act of 1969. The show cause notice was adjudicated by the Additional Collector. The appeal preferred by the respondent was allowed. The appellant department filed an appeal before the Appellate Tribunal Customs, Sales Tax and Excise which was dismissed by a Single Member. The reference application filed by the appellant was allowed and the matter was remanded by the High Court to the Tribunal. The latter dismissed the appeal. The reference application filed by the appellant department under section 196 of the Act of 1969 was dismissed by a Division Bench of the High Court. The Collector of Customs assailed the same.

Issues: i) Whether the proceedings under section 32 and the recovery of duty, taxes or charge under the Customs Act 1969 are barred if the provisional assessment becomes final under sections 80 & 81?
ii) What is the principle of interpretation of a fiscal statute qua tax and equity?

Analysis: i) Section 81 empowers the officer of customs to provisionally assess the goods if the assessment is not possible under section 80 for reasons explicitly described in the former provision. Section 81 does not create a right in favor of the importer except that if the final determination is not made within the specified time then the assessment becomes final. The finality of the assessment under section 81 renders it at par with an assessment made under section 80. The finality of assessment under section 81 makes the provisional assessment final and not the declaration made by the importer under section 79. The assessment made under section 80 does not bar subsequent proceedings in connection with the offence under section 32 of the Act of 1969. (…) The answer is in the negative and this is implicit from a combined reading of section 32. Section 32 is a penal section and describes , under clauses a to c , the acts that would constitute as an offence if done in connection with any matter of customs knowing or having reasons to believe that they are false in any material particular. Sub-sections 2, 3 and 4 provide for the mechanism and machinery for recovering the duty, taxes or charge not levied, or short levied or erroneously refunded within the period specified in each eventuality. (…) The finality of assessment , whether under section 80 or section 81, as the case may be, does not preclude invocation of the offence under section 32 , nor proceedings for recovery of duty, taxes or charge that has not been levied, short levied or erroneously refunded within the prescribed time from the relevant date. The finality of assessment under section 80 or section 81, as the

case may be, is distinct from the offence described under section 32 and does not bar the proceedings thereunder, provided they are within the limitation period explicitly specified in the case of each eventuality separately. (…) We, therefore, hold that the finality assessment under section 80 or the provisional assessment under section 81 does not operate as a bar against proceedings relating to the offence described under section 32 of the Act of 1969 nor relating to the recovery of duty, taxes or charge not levied, short levied or erroneously refunded, provided they are within the limitation period prescribed in the case of each eventuality respectively.

ii) It is a settled principle of interpretation of a fiscal statute that tax and equity are strangers.

Conclusions: i) The finality of assessment under section 80 or the provisional assessment under section 81 does not operate as a bar against proceedings relating to the offence described under section 32 of the Act of 1969 nor relating to the recovery of duty, taxes or charge not levied, short levied or erroneously refunded, subject to limitation.

ii) It is a settled principle of interpretation of a fiscal statute that tax and equity are strangers.

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23. **Supreme Court of Pakistan**
Ijaz ul Haq v. Mrs. Maroof Begum Ahmed & others
Civil Appeal No.1121 of 2018
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Jamal Khan Mandokhail, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1121_2018.pdf

Facts: The variant decree drawn by the Islamabad High Court has impelled the plaintiff to appeal before Supreme Court to restore the decree issued to him by the trial Court in his suit for specific performance of the contract.

Issues: i) When suit would be deemed to have been instituted against a defendant who has been impleaded in suit after institution of suit through amended plaint?

ii) Whether a suit for specific performance of the contract would be maintainable against the Attorney/agent when it was not within time to the extent of necessary party (principal/actual owner of property in question)?

iii) How the plaintiff, for decree for specific performance, ought to prove that all the time he had been ready and willing to perform his obligations arising out of the contract?

iv) Whether attorney of plaintiff can appear as witness to depose about readiness and willingness of plaintiff to perform the contract?

Analysis: i) In terms of Section 22 of the Limitation Act, 1908, the suit would, as regards defendant who has not been impleaded in original plaint and has been impleaded as defendant later on through amended plaint, be deemed to have been instituted from the point of time when he/she is so made a party and not from the date of

filing of original plaint.

ii) It is now well recognized that a power of attorney is the creation of the agency whereby the grantor (the principal) authorizes the grantee (the agent) to do the acts specified therein on behalf of the grantor (the principal), which, when executed will be binding on the grantor (the principal) as if done by him. As such, it is ordinarily the function and the duty of an agent in his contractual dealings for his principal to act not only for and on account of his principal, but in the principal's name. It is a general rule that where a contract is made for and on account of the principal and in his name, and the agent has no beneficial interest in the contract, the right of action upon the contract is in the principal alone and the agent neither can sue and be sued upon it. This principal is also embedded in Section 230 of the Contract Act, 1872. We, therefore, are poised to conclude that defendant No.1, as an agent/attorney, acted for and on behalf of defendant No.1-A and thus suit for specific performance of the contract was not maintainable against her, especially when the plaintiff had added defendant No.1-A after the prescribed period of limitation, and secondly, her status in it, at best, could only be regarded as a proper party and, in terms of Section 27 of the Specific Relief Act, 1877, specific performance of the contract also could not be sought against her.

iii) Such a question is a standard feature of the suit seeking a decree for the specific performance of the contract, and the answer to it not only contributes to determine the parties' rights but also provides a base for the Court in exercising its equitable jurisdiction. Determination of the readiness and willingness to perform the obligations emanating from the contract is a calculus for ascertaining the bona fide of the parties. As the initial burden is always on the plaintiff, he must first state in his plaint the facts demonstrating his readiness and willingness to perform his part of the contract and then prove it by producing convincing and reliable evidence. The law governing this aspect of the matter is provided in Form No.47 and 48 in Appendix-A of the First Schedule to the Code of Civil Procedure, 1908. According to para-2 of Form 47, the plaintiff is to state in the plaint that he had applied to the defendants specifically to perform the contract on their part, but the defendants had not done so. Similarly, per para-2 of Form 48, the plaintiff was required to state in his plaint that on such and such date, he tendered an amount to the defendants and demanded a transfer of the property. Thus, in his suit for specific performance, the plaintiff ought to have pleaded and proved his readiness and willingness to perform his obligations under the contract.

iv) There is no doubt that the plaintiff has to prove that he was always ready and willing to perform his obligations in terms of the contract, so it is also necessary for him to go into the witness box and give evidence that he had all along been ready and willing to perform his part of the contract, and would even subject himself to cross-examination on that issue. The plaintiff cannot examine in his place, his Attorney who do not have personal knowledge about his readiness and willingness. His attorney is also irrelevant to the issue because he was neither involved in the negotiations culminated into the contract, nor signed the contract nor was he a witness to it. What is more, readiness and willingness refer to the

state of mind and conduct of the vendee, as also his capacity and preparedness on the other. One without the other is not sufficient. Therefore, the Attorney, who has no personal knowledge, cannot give evidence about plaintiff's readiness and willingness to perform the obligations in terms of the contract…

Conclusion: i) The defendant who has not been impleaded in original plaint and has been impleaded as defendant later on through amended plaint, be deemed to have been instituted from the point of time when she was so made a party and not from the date of filing of original plaint.
ii) Suit for specific performance of the contract is not maintainable against the Attorney/agent when it was not within time to the extent of necessary party (principal/actual owner of property in question). Attorney/agent can only be regarded as a proper party and, in terms of Section 27 of the Specific Relief Act, 1877, specific performance of the contract also cannot be sought against attorney/agent.
iii) As the initial burden is always on the plaintiff, he must first state in his plaint the facts demonstrating his readiness and willingness to perform his part of the contract and then prove it by producing convincing and reliable evidence.
iv) The plaintiff cannot examine in his place, his Attorney who do not have personal knowledge about his readiness and willingness.

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24. **Supreme Court of Pakistan**
Sultan Ahmed v. Registrar, Balochistan High Court, Quetta and others
Criminal Appeal No.633 of 2019
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._633_2019.pdf

Facts: Through this appeal, the appellant challenged the order of the Balochistan High Court, passed in a *suo motu* contempt proceeding. The High Court has, by the said order, convicted the appellant under the Contempt of Court Ordinance 2003 and sentenced him to imprisonment till rising of the court with a fine.

Issues: i) Whether High Court has power to suo moto exercise its Constitutional jurisdiction on the report of District & Sessions Judge?
ii) What is the effect of unqualified apology on requirement of framing of charge in contempt proceedings and on right of fair trial?
iii) Whether dropping the contempt proceedings on unqualified apology of accused is a general rule?
iv) What stature District Judiciary hold in the justice system?
v) What Constitutional safeguard judges of district judiciary have?
vi) What is the duty of a High Courts towards district judiciary?
vii) What is the real purpose of contempt law?
viii) Why it is necessary for district judiciary to have independent security force?
Additional Note

ix) What is the status of a trial judge before a common citizen?
x) Whether criminal proceedings or FIR can be lodged against a judge of district judiciary for acts unrelated to his judicial functions without certain precautions from the executive?
xi) Why mandatory precautions should be suggested to the executive, while dealing with a criminal case in which a judge of the District Judiciary is found to be involved?
xii) Whether it will conduce to the independence of the judiciary if some precautionary measures are ordered to the executive to be observed while taking actions under the criminal law against the judges of District Judiciary?
xiii) What procedure should be adopted by the executive for arrest and criminal proceedings against judges of District Judiciary?

Analysis: i) It is not disputed that the High Court had the jurisdiction to initiate *suo motu* the contempt proceeding against the appellant on the report of the District & Sessions Judge. Numbering the matter as a constitution petition instead of a contempt proceeding is only an error of procedure, which does not affect the jurisdiction of the High Court. Needless to reiterate the well-settled legal position that the mentioning of a wrong or inapplicable provision of law or non-mentioning of the applicable provision of law while exercising the jurisdiction or power which is otherwise vested in a court, tribunal or authority, does not by itself have any fatal consequences.
ii) An unqualified apology tendered by the person accused of having committed the contempt of court necessarily means that he admits his guilt and submits the apology in the realization of the fact that he has done a wrong, for which he repents and seeks forgiveness. In cases where the accused tenders an unqualified apology, there remains no need of framing the charge and recording the evidence. Therefore, the conviction of the appellant by the High Court on the basis of his admission made through submitting an unqualified apology does not in any way offend Article 10-A of the Constitution.
iii) However, this is not an absolute rule to be followed invariably in all cases. The exceptional facts and circumstances of a case may justify departure from this general rule. The courts may, despite the submission of an unqualified apology, convict the accused in the peculiar facts and circumstances of the case and may treat his apology only as a mitigating circumstance to impose a lesser punishment.
iv) It is important to reiterate that the 'District Judiciary is the backbone of our judicial system'…As per the Judicial Statistics of Pakistan of the year 2021, the percentage of the cases handled by the district judiciary is 82% of the total pendency of cases in Pakistan. The district judiciary thus forms the foundational constituent of the justice system.
v) The Constitution protects the constitutional court judges through the power of contempt under Article 204 of the Constitution and through the Supreme Judicial Council established under Article 209 of the Constitution, while it is Article 203

of the Constitution that safeguards the judges of the district judiciary by placing them under the protective umbrella of the High Court of the respective Province.

vi) Although the Supreme Court of Pakistan as the apex court of the country is the custodian of justice as well as of the courts dispensing justice throughout the land, the primary duty to ensure the protection of district judiciary is of the High Courts under whose supervision and control it functions. This duty is inherent in and concomitant with the power to supervise and control vested in the High Courts under Article 203 of the Constitution. In line with this constitutional mandate, the Legislature has conferred upon the High Courts the power to punish a contempt committed in relation to any court of the district judiciary.

vii) Unlike the popular belief that the law of contempt protects the courts and judges, the real purpose of this law, as observed by this Court in *Khalid Masood,* is the protection of the public interest and more importantly public confidence in the justice system. Even though the courts are the creation of the Constitution or the law, their real strength and power base lie in the confidence reposed in them by the public.

viii) However, the administrative autonomy has been somewhat wanting over the years in the area of security of judges. The security and protection of judges is not an internal function of the judiciary but is dependent on and in control of the executive. The district judiciary protects the common people at the grassroots level against the misuse or abuse of executive power by the district administration and police. This check has an inherent potential to create tension between the district judiciary and the district administration and police.

Additional Note

ix) It will not be an overstatement if I say that a trial court judge, for an ordinary common citizen, is the human face of the law. It is, therefore, necessary that the District Judiciary should be honest, fearless and free from any pressure and should be able to achieve the preambular goal of justice by deciding cases only according to the law without being influenced by any external pressure.

x) The questions for me to consider is whether criminal proceedings can be instituted against a judge of the District Judiciary for acts unrelated to his judicial functions, whether an FIR can be recorded against him under section 154 Cr.P.C., and if yes, is it desirable to ask the executive to follow certain precautions while doing so? The sufficient answer to all facets of this question is yes. As to the first two parts of the question, there can be no doubt, and it is well settled that the judicial title does not render its holder immune from responsibility even when the criminal act is committed behind the shield of judicial office. Immunity from criminal liability does not extend to non-judicial acts, and thus, a judge cannot in any way escape criminal liability and can be arrested.

xi) Appraising the above-stated values of our society on a legal principle which states that no one is above the law, no one is below it, and all are equal, it is safe to conclude that it would be injurious to the health of the society if certain mandatory precautions are not suggested to the executive, while dealing with a criminal case in which a judge of the District Judiciary is found to be involved.

xii) As such, here we are faced with a situation of balancing these basic values. There is no settled legal principle which provides us with an answer to what weight is to be assigned to each value and how to balance them; nevertheless, the weighing and balancing of the conflicting values should be: (i) a rational process, manifesting reason, not fiat; (ii) objective, reflecting consensus and shared values of the society, not personal values; (iii) based on traditions or precedents; and (iv) in a manner that it may fit into the general structure of the institutional-government system; and while doing so, the approach should be holistic.

xiii) I am therefore of the view that to maintain a balance between two constitutional values, to wit, preserving the independence of the judiciary and ensuring the prevention of crime while maintaining the rule of law, the guidelines suggested by the High Court fit into the institutional-government system, and it will be tider and safer to order them to be observed with the following modifications:

(i) If a judicial officer of the District Judiciary is to be arrested for some offence, it should be done under intimation to the nominee of the concerned High Court;

(ii) If facts and circumstances necessitate the immediate arrest of a judicial officer of the District Judiciary, a technical or formal arrest may be effected; and the facts of such arrest should be immediately communicated to the nominee of the concerned High Court.

(iii) The Judicial Officer so arrested shall not be taken to a police station, without the prior order or directions of the nominee of the concerned High Court;

(iv) Immediate facilities shall be provided to the Judicial Officer of communication with his family members, legal advisers and the District & Sessions Judge of his District;

(v) No statement of a Judicial Officer who is under arrest be recorded, nor any medical tests be conducted except in the presence of the legal adviser of the Judicial Officer concerned or another Judicial Office of equal or higher rank, if available; and

(vi) There should be no handcuffing of a Judicial Officer. If, however, violent resistance to arrest is offered or there is imminent need to effect physical arrest to avert danger to life and limb, the person resisting arrest may be overpowered and handcuffed. In such case, immediate report shall be made to the District & Sessions Judge concerned and also to the nominee of the High Court. But the burden would be on the Police/executive to establish the necessity for effecting the physical arrest and handcuffing of the Judicial Officer, and if it is found that the physical arrest and handcuffing of the Judicial Officer was unjustified, the Police Officers causing or responsible for such arrest and handcuffing would be guilty of misconduct and would also be personally liable for compensation and damages as may be summarily determined by the High Court.

The above guidelines oblige each High Court to issue a notification, exercising its powers under Article 203 of the Constitution, for the nomination of a person, not less than the rank/grade of a District & Sessions Judge, who will attend to such criminal proceedings in which a judge of the District Judiciary is found involved,

so as to ensure transparency and fair trial. It is expected that this will be done expeditiously.

Conclusion: i) When no order in constitutional jurisdiction is passed, High Court has the power to initiate suo moto the contempt proceedings on the report of District & Sessions Judge. Numbering the matter as constitutional petition instead of contempt petition is merely a procedural error.

ii) An unqualified apology tendered by the contemnor means admission of guilt thus there remains no need of framing of charge and thus it does not hamper his right of fair trial under Article 10-A of the Constitution.

iii) No, dropping the contempt proceedings upon unqualified apology by accused is not an absolute rule. Such accused may be convicted by the Court despite submission of an unqualified apology in the peculiar facts and circumstances of the case.

iv) The District Judiciary holds the stature of foundational constituent of the justice system for handling 82% of total pendency of cases in Pakistan.

v) Judges of district judiciary are safeguarded under Article 203 of the Constitution by placing them under the protective umbrella of the High Court of the respective Province.

vi) It is the primary duty of High Courts to ensure the protection of district judiciary under whose supervision and control it functions. This duty is inherent in and concomitant with the power to supervise and control vested in the High Courts under Article 203 of the Constitution.

vii) The real purpose of contempt law is the protection of public interest and public confidence in judicial system.

viii) It is necessary for district judiciary to have independent security force in the form of security agency for its judicial, financial and administrative autonomy.

Additional Note

ix) A trial court judge, for an ordinary common citizen, is the human face of the law.

x) Immunity from criminal liability does not extend to non-judicial acts, and thus, a judge cannot in any way escape criminal liability and can be arrested with certain precautions from executive.

xi) Mandatory suggestions to executive while dealing with a criminal case in which a judge of the District Judiciary is found to be involved, are necessary for the health and confidence of the society on district judiciary.

xii) See above in analysis portion.

xiii) See above in analysis portion.

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25. **Supreme Court of Pakistan**
Abdul Nafey v. Muhammad Rafique and others
Civil Petition No. 173-Q of 2023
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._173_q_2023.pdf

Facts: Through this petition under Article 185(3) of the Constitution, the petitioner has assailed the judgment passed by the learned High Court of Baluchistan, Quetta whereby the Constitutional Petition filed by the petitioner was dismissed and the order of the learned Election Tribunal/Appellate Authority was upheld.

Issues: i) Whether school record or CNIC ought to be given preference for determination of age of candidate for contesting Election as per Baluchistan Local Government (Election) Rules, 2013?
ii) Whether a statute needs other interpretation when meaning of a statute is clear and in plain language?
iii) Whether a candidate for contesting Election can take benefit of correction of age made after announcement of Election Schedule?

Analysis: i) A bare reading of Section 13 of the Baluchistan Local Government (Election) Rules, 2013, shows that any person whether he is a candidate, a proposer or a seconder must have Computerized National Identity Card to meet the requirements mentioned in the Act & Rules, which means that the credentials of a person on the CNIC would be given preference.
ii) It is settled law that when meaning of a statute is clear and plain language of statute requires no other interpretation then intention of Legislature conveyed through such language has to be given full effect. Plain words must be expounded in their natural and ordinary sense. Intention of the Legislature is primarily to be gathered from language used and attention has to be paid to what has been said and not to that what has not been said.
iii) Learned counsel for the petitioner put much stress on the point that the correction in the CNIC had already been made while the matter was pending before the learned High Court. However, on our specific query, he admitted that he sought correction in the NADRA record after the election schedule had been announced. In this eventuality, a right had accrued in favour of the contesting candidates, which cannot be taken away without any cogent reason. Learned counsel could not convince us as to when on the date of filing of nomination papers the petitioner was not qualified, how can the defect be cured later on.

Conclusion: i) As per Baluchistan Local Government (Election) Rules, 2013, the credentials of a person on the CNIC would be given preference.
ii) A statute does not need any other interpretation when meaning of a statute is clear and in plain language.
iii) A candidate for contesting Election cannot take benefit of correction of age made after announcement of Election Schedule.

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26. **Supreme Court of Pakistan**
Chief Minister through Secretary Government of Punjab, Irrigation Department, Lahore etc. v. Muhammad Afzal Anjum Toor
C.P. No. 2456-L/2022
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Ms. Justice Musarrat Hilai
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2456_l_2022.pdf

Facts: After issuing show cause notice under section 1.8(a) of the Pension Rules 1963, disciplinary proceedings were conducted against respondent and, on recommendation of Investigation Committee, the Competent Authority awarded major penalty of recovery from the respondents' pension. Later, respondent's review petition filed before the Chief Minister Punjab was still pending, when the Punjab Service Tribunal Lahore passed order to allow respondent's appeal, which order is assailed by department through this petition for leave to appeal.

Issue: Whether the disciplinary proceedings, in light of the provisions of Section 21 of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006, could be validly initiated against an employee after three years of his retirement?

Analysis: The proviso to Section 21 of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 imposes a mandatory obligation on the competent authority to finalize proceedings against a retired employee not later than two years from the date of his retirement. Additionally, Section 20 of the Act ibid explicitly provides that the provisions of the Act ibid shall have an overriding effect contrary to any other law for the time being in force.

Conclusion: Disciplinary proceedings against an employee after three years of the date of his retirement cannot be initiated as it would be a violation of mandatory provision of Section 21 of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006.

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27. **Supreme Court of Pakistan**
Cantonment Board Peshawar, Peshawar Cantt thr. Executive Officer & another v. M/s RACO Advertisers & another
Civil Appeal No.1137 of 2014
Mr. Justice Amin-Ud-Din Khan, Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1137_2014.pdf

Facts: This civil appeal with leave of this Court is brought to challenge the judgment passed by High Court whereby the writ petition filed by the respondent was disposed of with the direction to the Director Military Lands and Cantonments, Peshawar Region, Peshawar to conduct fresh arbitration and consider the grievance of the respondent No.1 raised in the memo of the writ petition.

Issues: i) Whether literal terms and conditions of arbitration agreement can be set out by

the parties in the arbitration agreement?
ii) Whether the Arbitration Act, 1940 is applicable on arbitration agreement?
iii) What are the grounds on which court can remit the award or can refer any matter to arbitration?
iv) Whether court is duty bound to fix the time within which the arbitrator or umpire shall submit his decision to the Court when award is remitted and what is effect when decision is not submitted within time?
v) What are grounds for setting aside an award?
vi) What are the objectives of non-obstante segment and doctrine of exhaustion of remedies?
vii) Whether law of land is binding and applies across the board to the populaces?
viii) Whether High Court can entertain and adjudicate disputed question of fact in writ jurisdiction?

Analysis: i) The remedy of arbitration elected through the written Agreement by the parties for resolving the dispute is essentially a genus of alternative dispute resolution outside the Courts whereby, rather than engaging in a lengthy lawsuit, the dispute is put to an end through arbitration. The remedy of arbitration by and large is considered efficacious and convenient for settlement of disputes and does not entail the cumbersome rigidities of procedure which timesaving for mending and patching up contractual and commercial disputes in terms of the arbitration clause delineated in the Agreement, including the choice and procedure for the appointment of an Arbitrator. The literal terms and conditions are set out in the arbitration agreement and the rationale of an arbitration agreement is more cost effective and expeditious than the pace of trial and decision of ordinary civil suits. The incidence of a dispute is rudimentary between the parties before embarking upon the remedy opted for the resolution of dispute(s) through arbitration agreement.
ii) To conduct arbitration in terms of the Agreement, recourse was to be made through the Arbitration Act which is the law of the land applicable for arbitration agreements.
iii) At this juncture, Section 16 of the Arbitration Act is also quite relevant which provides that the Court may from time to time remit the award or any matter referred to arbitration to the arbitrators or umpire for reconsideration upon such terms as it thinks fit (a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration, and such matters cannot be separated without affecting the determination of the matters referred; or (b) where the award is so indefinite as to be incapable of execution; or (c) where an objection to the legality of the award is apparent upon the face of it.
iv) In the same parlance, sub-section (2) provides that where an award is remitted under sub-section (1) the Court shall fix the time within which the arbitrator or umpire shall submit his decision to the Court; Provided that any time so fixed may be extended by subsequent order of the Court; and according to sub-section (3) an

award remitted under sub-section (1) shall become void on the failure of the arbitrator or umpire to reconsider it and submit his decision within the time fixed. Whereas under Section 19, where an award has become void under sub-section (3) of section 16 or has been set aside, the Court may by order supersede the reference and shall thereupon order that the arbitration agreement shall cease to have effect with respect to the difference referred.

v) The niceties of Section 30 of the Arbitration Act explicate that an award shall not be set aside except on the ground(s) (a) that an arbitrator or umpire has misconducted himself or the proceedings; (b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under Section 35; or (c) that an award has been improperly procured or is otherwise invalid.

vi) Compliant with the objective of the non-obstante segment set in motion under Section 32 of the Arbitration Act, no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be set aside, amended, modified or in any way affected otherwise than as provided in the Arbitration Act; and under the exactitudes of Section 33, any party to an arbitration agreement, or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined, may apply to the Court for decision. The doctrine of exhaustion of remedies prevents a litigant from seeking a remedy in a new court or jurisdiction until all claims or remedies have been exhausted (i.e. pursued as fully as possible) in the original one, and this doctrine was originally created on the principles of comity.

vii) The turn of phrase “law of the land” is in fact an intact body of binding and effective laws made applicable in any country or jurisdiction. The hegemony of law is that no man is above the law, and every man is subject to the law of the land and the Courts. Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 (“Constitution”) envisages that to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen wherever he may be, and of every other person for the time being within Pakistan and, at the same time, Article 25 of the Constitution accentuates that all citizens are equal before law and are entitled to equal protection of law. The Latin phrase “lex terrae” alludes to the "law of the land" which is serviceable and in effect in any country and applies across the board to the populaces; this encompasses all laws, rules and regulations which everyone is bound to follow including due process, fair trial and unbiased legal process. Whereas another Latin phrase “legem terrae” denotes that things should be done according to the law of the land and also connotes that each and every one should adhere to the laws and be dealt with fair and square and the legal proceedings should be conducted in accordance with the law.

viii) It is a well settled exposition of law that disputed questions of fact cannot be entertained and adjudicated in writ jurisdiction. The learned High Court in the impugned judgment observed that it cannot assume the task of recording evidence

regarding what amount was collected by the Cantonment Board during the period under dispute in the constitutional jurisdiction, but despite that the High Court remanded the case in writ jurisdiction for de novo arbitration. The extraordinary jurisdiction under Article 199 of the Constitution is envisioned predominantly for affording an express remedy where the unlawfulness and impropriety of the action of an executive or other governmental authority could be substantiated without any convoluted inquiry. The expression "adequate remedy" signifies an effectual, accessible, advantageous and expeditious remedy.

Conclusion: i) Literal terms and conditions of arbitration agreement can be set out by the parties in the arbitration agreement.
ii) The Arbitration Act, 1940 is applicable on arbitration agreement.
iii) Section 16 of the Arbitration Act, 1940 provides that Court can from time to time remit the award or refer any matter to arbitration. Grounds are mentioned above in analysis No. iii.
iv) Court is duty bound to fix the time within which the arbitrator or umpire shall submit his decision to the Court when award is remitted and if decision is not submitted within time, award becomes void.
v) Section 30 of the Arbitration Act, 1940 provides the grounds for setting aside an award as mentioned above under analysis No. v.
vi) The objective of the non-obstante segment set in motion under Section 32 of the Arbitration Act, 1940 is that no suit shall lie on any ground otherwise than as provided in the Arbitration Act and the doctrine of exhaustion of remedies prevents a litigant from seeking a remedy in a new court or jurisdiction until all claims or remedies have been exhausted.
vii) Law of land is binding and applies across the board to the populaces.
viii) High Court cannot entertain and adjudicate disputed question of fact in writ jurisdiction.

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28. **Supreme Court of Pakistan**
Muhammad Suleman v. Chief Secretary, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others
Civil Petition No. 4424 of 2021
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, **Mr. Justice Athar Minallah**
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4424_2021.pdf

Facts: The notification declaring petitioner ineligible for regularization by the competent authority was assailed by invoking the jurisdiction of the Peshawar High Court. It is a leave against judgment of the Peshawar High Court whereby the constitutional petition was dismissed.

Issue: Whether an appointment, not made through a competitive transparent process by the Principal of a college and not by the Government can be regularized?

Analysis: Appointments of any nature, whether initial or ad hoc, permanent or temporary, if made in violation of the principle of transparency and competitive process, inter alia, without inviting applications from the public is in violation of the

Constitution and are, therefore, void. Selecting a qualified, eligible and most deserving person is a sacred trust which is to be discharged honestly and fairly in a just and transparent manner and in the best interest of the public.

Conclusion: Any appointment made in violation of principle of transparency and competitive process is not eligible for regularization.

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29. **Supreme Court of Pakistan**
Hayat Muhammad thr. LRs v. Muhammad Riaz
Civil Appeal No. 1551 of 2017
Mr. Justice Jamal Khan Mandokhail, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1551_2017.pdf

Facts: The predecessor of the appellants filed a suit for cancellation of gift mutation. The suit was decreed by the trial court and the appeal filed by the respondent was dismissed. A civil revision filed by the respondent before the High Court was allowed. The judgments of both courts were set aside and the suit of the appellants was dismissed by means of the judgment impugned, hence, this appeal.

Issues: i) What are prerequisites of a valid gift and when it comes into existence?
ii) Who is competent to make a valid gift under Muhammadan law?
iii) What is a precondition for revocation of a gift?

Analysis: i) "Gift" is defined in section 138 of the Muhammadan Law as: "A hiba or gift is a transfer of property, made immediately, and without any exchange, by one person to another, and accepted by or on behalf of the latter." The prerequisites of a valid gift are: (a) offer by the donor; (b) its acceptance by the donee; and (c) the delivery of possession. A valid gift comes into existence as soon as the three ingredients are completed…
ii) Under Muhammadan Law, any Muslim can make a valid gift of movable or immovable property orally, however, it may be reduced into writing as proof.
iii) The precondition for revocation of a gift as provided by section 167 of the Muhammadan Law is that it can only be revoked before delivery of possession. It implies that despite declaration of gift by the donor and its acceptance by the donee, the donor may change its mind and may not complete the gift by not delivering the possession.

Conclusion: i) The prerequisites of a valid gift are: (a) offer by the donor; (b) its acceptance by the donee; and (c) the delivery of possession and a valid gift comes into existence as soon as the three ingredients are completed.
ii) Under Muhammadan law, every Muslim is competent to make a valid gift of movable or immovable property.
iii) The precondition for revocation of a gift as provided by section 167 of the Muhammadan law is that it can only be revoked before delivery of possession.

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30. **Lahore High Court**
Coca Cola Beverages Pakistan Ltd. v. Ghulam Abbas etc.
W.P. No. 22538 of 2022.
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC4544.pdf

Facts: Through this petition the petitioner-company assailed the order of the learned full bench NIRC, Lahore whereby the Grievance Petition of the respondent No.1 was accepted which was dismissed by the National Industrial Relations Commission (NIRC).

Issues: i) Whether mere rendering a piece of evidence, as primary in nature, does stand proof of the fact that guilt of a person has been proved?
ii) Whether CCTV footage can be relied upon without fulfillment of the required criteria?
iii) Where the person who prepared or retrieved the CCTV footage from the computer has not been produced in evidence whether it can be said that the allegation against the guilty employee has been proved?
iv) If proceeding initiated against an employee pursuant to Show Cause Notice are subsequently dropped whether the Inquiry Officer can submit any report in that regard?
v) Whether non-production of the Resolution of Board of Directors of the petitioner-company, authorizing the person to appear on behalf of the petitioner-company dilutes the case of the petitioner-company?
vi) Whether anybody can be allowed to be lynched on the whims of the employer without proving the guilt?

Analysis: i) Mere rendering a piece of evidence, as primary in nature, does not stand proof of the fact that guilt of a person has been proved rather for the purpose the prosecution-complainant is bound to prove the allegation(s).
ii) If the authenticity of the CCTV footage, being relied upon by the petitioner-company, is considered in the light of the afore-referred judgments of the Hon'ble Supreme Court of Pakistan, there leaves no ambiguity that without fulfillment of the required criteria, the same could not be relied upon to hold respondent No.1 guilty.
iii) The person who prepared or retrieved the CCTV footage from the computer has also not been produced in evidence, thus, it cannot be said that the petitioner-company proved the allegation against respondent No.1.
iv) It is very ironical to note that though the proceedings initiated against respondent No.1 on account of absence from duty through Show Cause Notice, dated 28.08.2012, were dropped but submission of two independent reports (Exh.P-17 and Exh.R-18) by the Inquiry Officer qua the proceedings started against respondent No.1 pursuant to Show Cause Notices, dated 08.08.2012 and 28.08.2012, stands proof of the fact that the inquiry proceedings against respondent No.1 were not conducted in a fair, transparent and impartial manner. If

proceedings initiated against respondent No.1, pursuant to Show Cause Notice, dated 28.08.2012, were subsequently dropped by the petitioner-company as to how the Inquiry Officer could submit any report in that regard.
v) Non-production of the Resolution of Board of Directors of the petitioner-company, authorizing the person to appear on behalf of the petitioner-company before the learned Single Bench, NIRC, dilutes the case of the petitioner-company.
vi) This Court has least sympathy with a person who is involved in any incident qua disturbing law and order situation in a concern but at the same time nobody can be allowed to be lynched on the whims of the employer without proving the guilt.

Conclusion: i) Mere rendering a piece of evidence, as primary in nature, does not stand proof of the fact that guilt of a person has been proved.
ii) CCTV footage cannot be relied upon without fulfillment of the required criteria.
iii) The person who prepared or retrieved the CCTV footage from the computer has not been produced in evidence, it cannot be said that the allegation against the guilty employee has been proved.
iv) If proceeding initiated against an employee pursuant to Show Cause Notice are subsequently dropped, the Inquiry Officer cannot submit any report in that regard.
v) Non-production of the Resolution of Board of Directors of the petitioner-company, authorizing the person to appear on behalf of the petitioner-company dilutes the case of the petitioner-company.
vi) Nobody can be allowed to be lynched on the whims of the employer without proving the guilt.

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31. **Lahore High Court**
Shehzad v. The State etc.
Criminal Misc. No.34710-B of 2023
Mr. Justice Syed Shahbaz Ali Rizvi
https://sys.lhc.gov.pk/appjudgments/2023LHC4526.pdf

Facts: The petitioner seeks post arrest bail in case FIR registered for offence under Section 9(1)3C of the Control of Narcotic Substances Act, 1997.

Issues: i) Whether non-submission of challan to the court in time makes the case of the accused one of further inquiry?
ii) Whether mere registration of criminal cases against the accused or his conviction is a fact sufficient to disentitle him to the grant of post arrest bail?

Analysis: i) Viable expeditious proceedings in the case are also a requirement of fair trial. In this case, it prima facie, seems that right of fair trial guaranteed by the Constitution stands infringed because of apparently willful abstaining from submission of challan to the Court in time. It prima facie, stinks mala fide on the part of concerned officials which makes this case one of further inquiry into

petitioner's guilt.

ii) It is unfortunately a growing phenomenon in our police culture that subordinate police officials book the persons having previous criminal record in narcotic cases by fabricating false evidence only to make the campaign or 'crackdown' ordered by the superior officers against the addicts or peddlers, successful that practice cannot at all be endorsed and encouraged. Order in the society is to be maintained and the crime is to be curbed by ensuring untainted justice for all… Learned Prosecutor has argued with vehemence the previous criminal record and his alleged conviction in two of the criminal cases yet as the petitioner has reasonably made out his case one of further inquiry into his guilt, mere registration of criminal cases against the petitioner and even his conviction in two of the referred cases is not a fact sufficient to disentitle him to the grant of post arrest bail.

Conclusion: i) Non submission of challan to the court in time makes the case of the accused one of further inquiry to grant the bail.

ii) Mere registration of criminal cases against the accused or even his conviction is not a fact sufficient to disentitle him to the grant of post arrest bail.

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32. **Lahore High Court**
Fatima Noon v. Zia-ul-Haq Noon & others
Writ Petition No.12264 of 2022
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC4556.pdf

Facts: Petitioners assailed orders passed by Civil Judge and Additional District Judge whereby petitioners' applications under Order I Rule 10 CPC and under Order VI Rule 17 CPC were concurrently dismissed.

Issue: Whether the revenue officials can be impleaded as necessary party in every civil case regarding attestation of mutation?

Analysis: Undeniably, impleading the revenue officials in every case is not a rule of universal application rather depends upon the peculiar facts and circumstances of each case. If the Court finds that impleadment of revenue functionaries is necessary for just decision, it can pass appropriate orders. They can also be summoned by either side or if considered necessary even as Court witnesses. It is notable that when connivance of the revenue officials with the defendant(s) in attesting any mutation is alleged in civil suit, the Province of the Punjab as well as the revenue officials against whom the connivance for attestation of the mutation is alleged, are the necessary party because no valid adjudication can be carried out and no finding can be recorded against them in their absence.

Conclusion: The revenue officials cannot be impleaded as necessary party in every civil case regarding attestation of mutation.

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33. **Lahore High Court**
Mst. Shamim Akhtar v. Ex-officio Justice of Peace, etc.
Writ Petition No. 37138/2023
Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2023LHC4575.pdf

Facts: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioner has challenged the vires of order passed by the Ex-Officio Justice of Peace, whereby upon her petition under Section 22-A Cr.P.C. seeking registration of criminal case against the proposed accused, the said Court referred the matter to the CPO, for addressing her grievance.

Issues: i) Whether Ex-officio Justice of Peace vested with authority to refer the matter to CPO for addressing the grievance of the petitioner?
ii) Whether police officials being proposed accused can be given premium of inquiry prior to registration of case?
iii)Whether police has authority to ascertain the veracity of information disclosing commission of cognizable offence prior to registration of case?

Analysis: i) Ex-officio Justice of Peace vested with no authority to refer the matter to CPO, for addressing the grievance of the petitioner; that while dealing with the application U/S 22-A Cr.P.C. Ex Officio Justice of Peace is duty bound to pass a direction either for registration of case or its dismissal…
ii) Merely for the reasons that the proposed accused are police officials, they cannot be given premium of inquiry prior to registration of case…
iii) The context in which the word 'shall' used in Section 154 Cr.P.C. leads to an irresistible conclusion that the police has no authority/ discretion whatsoever to ascertain the veracity of information disclosing commission of cognizable offence prior to registration of case…

Conclusion: i) Ex-officio Justice of Peace vested with no authority to refer the matter to CPO for addressing the grievance of the petitioner.
ii) Police officials being proposed accused cannot be given premium of inquiry prior to registration of case.
iii) Police has no authority to ascertain the veracity of information disclosing commission of cognizable offence prior to registration of case.

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34. **Lahore High Court**
Sumaira v. The State etc.
Writ Petition No. 75596/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC4535.pdf

Facts: Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner seeks quashing of proceedings of the investigation wherein local police found that it was not a gang rape and

substituted section 375-A PPC with section 371-B PPC and a direction to the Respondents to reinvestigate the case in accordance with the law, i.e., section 9 of the Anti-Rape Act.

Issues: i) Whether the Anti-Rape Act is a remedial social statute and how it is to be interpreted?
ii) Whether Section 9 of the Anti-Rape Act is mandatory in nature?

Analysis: i) The Anti-Rape Act is a remedial social statute. If there is any doubt in the cases of remedial laws, it is resolved in favour of the class of persons for whose benefit the statute is enacted. The Anti-Rape Act aims to effectively deal with the rape and sexual abuse crimes mentioned in its Schedules committed against women and children. The courts must interpret the Anti-Rape Act liberally and purposively.
ii) Section 9 of the Anti-Rape Act provides a special procedure for investigating Scheduled Offences. The Anti-Rape Act is a special legislation that would prevail over any regular law on the subjects it addresses. Parliament has used the word "shall" in every sub-section therefore, this word connotes that the provision is obligatory.

Conclusion: i) The Anti-Rape Act is a remedial social statute and the courts must interpret the Anti-Rape Act liberally and purposively.
ii) Section 9 of the Anti-Rape Act is mandatory in nature.

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35. **Lahore High Court**
Imran Hameed etc. v. The State etc.
Criminal Misc. No.5151/B/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC4565.pdf

Facts: A criminal case was registered with allegations that the Qadianis had built a worship place consisting of a room with a minaret, which is an architectural feature and a religious symbol important to Islam and it is an insult to the religious feelings of the Muslim population of the locality and a perpetual source of pain and anguish for them. Since the Petitioners are managing the affairs of that worship place, they are liable under the law. The Petitioners have applied for pre-arrest bail in that case by this application under section 498 Cr.P.C.

Issues: i) Whether section 298-B forbids the members of the Qadiani Group or the Lahori Group from using epithets, descriptions and titles designated for certain holy personages etc?
ii) Whether matter should be referred to a larger bench when there are conflicting views of two benches of equal strength?
iii) How the term "continuous crime" can be defined?
iv) Whether prosecution is bound to prove that the accused possessed mens rea when he committed the act which caused the actus reus to prove the offence?

Analysis: i) Section 298-B forbids the members of the Qadiani Group or the Lahori Group (who call themselves Ahmadis) from using epithets, descriptions and titles designated for certain holy personages. It also prohibits them from referring to, naming or calling their place of worship as Masjid, or by oral or written words or by visible representation referring to the call to prayers as "Azan" or reciting it like Muslims. Section 298-C criminalizes public propagation of the Qadiani/Ahmadi religion by any member of that community posing himself as Muslim or referring to his faith as Islam, thereby outraging the religious sensitivities of Muslims.

ii) It is settled law that when there are conflicting views of two Benches of equal strength, the matter should be referred to a larger Bench.

iii) A research article defines "continuous crime" as that specific form of legal unity of offence in which a crime is committed through multiple actions or inactions at different times based on a unique criminal intent and against a unique passive subject. Thus, to qualify as a continuous offence, a penal act must meet the following conditions: "the presence of a unit of a passive subject, the unit of an active subject, the performance of multiple actions or inactions that represent the contents of the same crime, at different periods of time and, last but not least, the condition that these actions or inactions be performed with a unique criminal intent ... The continuous form of legal unity of offence necessitates thoroughly examining each element of its content as a whole (as a unique crime) and of every deed that enters into its composition (as the plurality of acts)." The scholar further states that the causal relationship must be proven or follow from the very materiality of the deed, depending on the classification of the crime into one of the categories: material and formal crimes; or crimes of danger and violence…According to some authorities, there are two types of continuing offences: (a) crimes in which some acts material and essential to the crime occur in one area or province and some in another, (b) crimes in which all of the elements required for its completion may have occurred in a single place, but the violation of the law is deemed to be continuing due to the very nature of the offence committed. Examples of the first class are malversation and abduction, and libel is an example of the second category when a libelous matter is published or circulated from one place to another. The crime of jailbreak may also be included in the second class. The act of the escaped prisoner is a continuous or series of acts initiated by a single impulse and operated by an uninterruptible force, regardless of how long it lasts. It may not be correct to say that once a convict has escaped from the place of his confinement, the crime is consummated because as long as he continues to evade the service of his sentence, he is deemed to continue committing the crime, and may be arrested without a warrant, at any location where he may be found.

iv) It is a settled principle that the prosecution must prove that the accused possessed mens rea when he committed the act which caused the actus reus. However, as the case of Fagan explained, where an actus reus may be brought

about by a continuing action, it is sufficient that the accused had mens rea during its continuance, albeit he did not have mens rea at its inception.

Conclusion: i) Section 298-B forbids the members of the Qadiani Group or the Lahori Group from using epithets, descriptions and titles designated for certain holy personages etc.
ii) When there are conflicting views of two Benches of equal strength, the matter should be referred to a larger Bench.
iii) To qualify as a continuous offence, a penal act must meet the following conditions: "the presence of a unit of a passive subject, the unit of an active subject, the performance of multiple actions or inactions that represent the contents of the same crime, at different periods of time and, last but not least, the condition that these actions or inactions be performed with a unique criminal intent.
iv) Prosecution is bound to prove that the accused possessed mens rea when he committed the act which caused the actus reus to prove the offence.

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36. **Lahore High Court**
Ghulam Rasool and two others v. The State etc.
Crl. Misc. No.47626-B/2023
Mr. Justice Farooq Haider
https://sys.lhc.gov.pk/appjudgments/2023LHC4560.pdf

Facts: A petition for grant of pre-arrest bail and a petition for grant of post arrest bail was filed in a case arising out of one and same F.I.R. registered under Sections: 302, 148, 149 PPC.

Issues: i) Whether in the cases falling in the prohibition contained in Section 497 Cr.P.C., grant of bail to a woman is a rule and refusal is an exception?
ii) Whether bail can be withheld as advance punishment?
iii) Whether it is better to err in granting bail than to err in refusal?
iv) Whether insistence of the Investigating Officer/police for arrest of accused is itself sufficient to reflect malafide on part of prosecution and accused in such circumstances is not required to produce any other evidence to prove the same?

Analysis: i) It is well settled that even in the cases falling in the prohibition contained in Section 497 Cr.P.C., grant of bail to a woman is a rule and refusal is an exception.
ii) It is trite law that bail cannot be withheld as advance punishment. Even otherwise bail is a procedural relief i.e. mere change of custody from State to surety and has no bearing on ultimate fate of the case.
iii) Liberty of a person is a precious right which has been guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. By now it is also well settled that it is better to err in granting bail than to err in refusal because ultimate conviction and sentence can repair the wrong resulted by a mistaken relief of bail.
iv) Insistence of the Investigating Officer/police for arrest of accused is itself sufficient to reflect malafide on part of prosecution and accused in such

circumstances is not required to produce any other evidence to prove the same.

Conclusion: i) In the cases falling in the prohibition contained in Section 497 Cr.P.C., grant of bail to a woman is a rule and refusal is an exception.
ii) Bail cannot be withheld as advance punishment.
iii) It is better to err in granting bail than to err in refusal.
iv) Insistence of the Investigating Officer/police for arrest of accused is itself sufficient to reflect malafide on part of prosecution and accused in such circumstances is not required to produce any other evidence to prove the same.

LATEST LEGISLATION / AMENDMENTS

1. Proviso to Rule 19 sub-rule (1) clause (f) of The Punjab Drug Rules, 2007 is substituted vide Notification No.SO (DC) 2-/2021.
2. Paras 2 & 3 of Schedule-V of The Punjab Police Special Branch (Intelligence Cadre) Service Rules, 2020 has been amended vide *Notification No.5575/Ad-VII.*
3. The Punjab Holy Quran (Printing and Recording) Rules, 2011 have been made and notified vide Notification No. (IBM)1-1/2010.
4. The Punjab Revenue Authority Employees (Appointment and Condition of Service) Rules, 2023 have been made and notified vide Notification No. SO(TAX)5-55/2020.
5. Serial numbers 92, 132, 137, 149, 150, 152 and 158 in schedule of the Punjab special Education Department (Directorate General of Special Education, Punjab) Service Rules, 2021 have been amended.
6. Amendments in Rule 1, sub-rule (1), in the schedule in the column number 1, after serial number 12-A and after serial number 20 of the Punjab Information Department Service Rules 1977 have been made.
7. Declaration of State Bank of Pakistan as "Collecting Agent" for class of persons in given column for the purpose of collection of tax and deposit into Government treasury under the Punjab Sales Tax on Services Act, 2012 and rules made thereunder vide notification of Punjab Revenue Authority, Finance Department No.PRA.32-24/2022/561 dated 05.07.2023.
8. Re-organization of all Enforcement Ranges/Units at PRA (Headquarters) Operations), Lahore, vide Notification No. PRA/Order 06/2017. Vol (V)/310.
9. Amendments have been made at serial number 13 in column number (4), at serial number 22 in column number 2 & 4, at serial number 24 in column number, at serial number 37 & 69 of second schedule of the Punjab Sales Tax on Services Act, 2012.
10. Declaration of mauzas Dandian, Rasool Pur, Khair Din Pur, Bukanwal, Jada, Qadian and Karolwar as urban areas vide Notification No.1788-2023/1206-ST(I).
11. Amendments in the part-II- clause 4, 8 and sub-clause 15, part-III clause 18 to 20, Annexure 0I & Annexure V of the Punjab Safe Cities Authority (PSCA)

Service Regulations, 2017 have been made vide Notification No. 6982/Legal/PSCA/23.

SELECTED ARTICLES

1. **MANUPATRA**
https://articles.manupatra.com/article-details/THE-EVOLUTION-OF-JURISPRUDENCE-BEHIND-DUE-PROCESS-OF-LAW

The Evolution of Jurisprudence "Behind Due Process of Law" by Nandu Dangi

The word 'jurisprudence' is derived from the combination of two Latin words 'Juris' and 'Prudentia'. The word 'Juris' means law while the word Prudencia means knowledge. Thus the literal meaning of Jurisprudence is 'knowledge of the law'. In reality, it is not just knowledge of the law but systematic knowledge of the law that is why 'Salmond' has described jurisprudence as the 'Science of Law'. Here 'Science' means the systematic study of the subject. According to Moyle, the ultimate goal of jurisprudence is generally the same as that of any other science. This is the reason why jurisprudence is called a precise and systematic study of the principles of law. Fitzgerald considers jurisprudence as the science of law as a special kind of investigation or investigation. The purpose of this research is to determine the basic principles of law and the legal system. But the nature of this investigation is abstract, general, and theoretical. Jurisprudence and legal theory have been used in similar meanings and sometimes in unequal senses. The word 'jurisprudence' has been used in the title of the books of jurisprudence by Pound, Patton, Dias, and Salmond, while the title of the books of Friedman and Finch 'Legal principle'. Prima facie, from the use of two different meanings, it appears that the meaning and scope of both are different. This appears to be due to the approaches to analysis, description, and formulation of the method. In the Anglo-Saxon countries and British colonies, the meaning of jurisprudence has been taken to mean a special type of analytical study which presents the study of the status quo legal system based on rationality. This can be considered the tradition of Bentham, Austin, and Kelsen. This study is purely logical and empirical, its task is to ensure stability and legal justice. It ignores the objectives of the method.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/INCOMING-AND-OUTGOING-PARTNERS-IN-A-FIRM

Incoming and Outgoing Partners in A Firm by Stuti Kushwaha

The Partnership is so-called a contract that has been defined under Section 4 of the Indian Partnership Act 1932. Under this section, a partnership can be defined as a contract between 2 or more authorized persons according to their will. Understanding that there will be profit sharing between the partners and investing their capital, skills, and money in the business. There may be other general categories to distinguish between

the partners but Incoming and Outgoing Partners are the two basic categories that define the types of partners in a Partnership Firm.

3. MANUPATRA

https://articles.manupatra.com/article-details/AN-ANALYSIS-OF-PREVENTION-OF-MONEY-LAUNDERING-ACT

An Analysis of Prevention of Money Laundering Act by Hritik Verma

A law that prohibits money laundering and makes provisions for the seizure of assets obtained via money laundering, including those implicated in it, as well as anything related to or incidental to it. A strategy or process used to disguise the origin, source, location, position, and mobility of a crime or to give a legal picture of the crime's proceeds is money laundering, which is the act of hiding the crime's proceeds and merging them into the legitimate financial system. The financial sector's erosion has a detrimental impact on the economy. Various areas, including money demand, growth, income distribution, etc., are impacted by money laundering. This article clarifies the rulings rendered in the situations of money laundering that are discussed. Additionally, the actions made to combat the issue of money laundering.

4. THE NATIONAL LAW REVIEW

https://www.natlawreview.com/article/liquidated-damages-disproportionate-to-actual-damages-deemed-unenforceable

Liquidated Damages Disproportionate to Actual Damages Deemed Unenforceable by John Mark Goodman

Construction contacts often include provisions that provide for pre-determined or "liquidated" damages in the event of a breach. Such provisions can provide certainty to the parties as to the consequences of a breach and can simplify the task of proving up damages at trial. However, as one contractor found out recently, courts may refuse to enforce liquidated damages provisions if the amount specified is disproportionate to the actual damages (see Smart Construction & Remodeling v. Suchy, 2023 WL 5525071 (Minn. Ct. App. August 28, 2023). Smart Construction involved a contract to repair a home in exchange for insurance proceeds. In negotiating the cost of repairs with the insurance company, the contractor submitted an estimate showing that it would receive 10% overhead and 10% profit on the job. After the contractor had reached agreement with the insurance company, the owner elected to forego the repairs. The contractor sued the owner for breach. The contract provided that in the event of a breach by the owner, the contractor would be entitled to 30% of the contract value as liquidated damages. The jury found that the owner breached the contract and awarded the contractor 30% liquidated damages.

5. THE YALE LAW JOURNAL
https://www.yalelawjournal.org/article/separation-of-powers-avoidance

Separation-of-Powers Avoidance by Z. Payvand Ahdout

When federal judges are called on to adjudicate separation-of-powers disputes, they are not mere arbiters of the separation of powers. By resolving a case (or declining to), federal courts are participants in the separation of powers. Stemming from this idea, this Article introduces the concept of separation-of-powers avoidance. Judges employ familiar techniques to avoid compelling high-level coordinate-branch officials to act. Undertaking an original review of cases ranging from executive privilege to Congress's subpoena power to congressional standing, this Article documents and models separation-of-powers avoidance. It explores how courts have dug a protective moat around the separation of powers through trans-doctrinal principles that can, if taken beyond the courtroom, distort the interpretation of the separation of powers. From constitutional rights to statutory interpretation, scholarship has recognized that judicial expositions of legal principles are not necessarily coterminous with underlying law. This Article extends that insight to the structural Constitution. It then theorizes this form of avoidance as a phenomenon reflecting uniquely judicial considerations. Finally, it offers normative prescriptions for the resolution of separation-of-powers conflict outside of federal courts. Separation-of-powers doctrine refracted through the lens of avoidance should not be taken outside of the courtroom. Bilateral negotiations between Congress and the President should not incorporate this form of doctrine, and both public and legal discourse should adjust to account for avoidance's distortionary effects on the structural Constitution.
