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FORTNIGHTLY CASE LAW BULLETIN

(01-11-2023 to 15-11-2023)

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

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
The Officer Incharge Army Housing Directorate, Karachi v. The Federation of Pakistan through Secretary Ministry of Defence and others
Civil Petition No. 1026 of 2021 along with CMA No. 5076 of 2021
Mr. Justice Qazi Faez Isa HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1026_2021.pdf

Facts: This petition is filed by 'The Officer Incharge, Army Housing Directorate' and the Advocate on Record was engaged on the basis of an 'Authority Letter' issued by Assistant Director, Housing (Askari Colonies Management) Askari-IV, Karachi. The Advocate on Record then engaged a private counsel as the Advocate Supreme Court to represent the petitioner. The petitioner has arrayed the Federation of Pakistan, the Military Estate Office, the Cantonment Board and others as respondents.

Issues: i) Whether the Askari Housing or its Officer Incharge is a legal entity established by law or has locus standi to initiate and defend legal proceeding?
ii) Whether Officer Incharge Army Housing Directorate can engage a private counsel to represent him in court?

Analysis: i) In response to our query whether the Askari Housing was a legal entity established by law or has locus standi to initiate and defend legal proceeding the learned private counsel, referred to the letter and to the lease and stated that the Askari Housing could do so. But, he did not support his answer with reference to the Constitution, the Rules of Business, 1973 ('the Rules') or any law. The learned AOR filed this CPLA, without first ascertaining the petitioner's legal status. He assumed that the 'Authority Letter' issued by an Assistant Director of Askari Housing was sufficient, and, on its basis also engaged an ASC. The underlying assumption of the learned AOR being that the executive authority of the Federation can be exercised by Askari Housing through its Assistant Director. It would be appropriate to examine how the executive authority of the Federation is to be exercised; how the Federal Government allocates and transacts its business; and, how litigation on behalf of the Federal Government is authorised and who can institute and conduct litigation… Neither Askari Housing nor its Officer Incharge is a separate entity. The requisite authorisation to initiate/defend legal proceedings, as mentioned above, was also not obtained. If the High Court's judgment was to be challenged it had to be done by one of the legal entities which have been arrayed as respondents herein, and after obtaining requisite approval/permission. The petitioner arraying them as respondents suggests that the respondents were satisfied with the judgment of the High Court, which has been assailed herein.
ii) As regards our query whether the petitioner could engage a private counsel we did not receive any answer from the learned Mr. Zuberi. Askari Housing is a component of the Federal Government and has no independent legal status. And, this Court has held that private counsel can only be engaged as stipulated in the

decision in Rasheed Ahmed's case, relevant portion wherefrom is reproduced hereunder: 'There may however be cases which involve complicated questions of the Constitution or some extremely technical law which the Attorney-General, in case of the Federation, and the Advocate General, in the case of a province, and their law officers do not have the requisite ability to attend to. In such a case the concerned constitutional officer holder should certify that he and the law officers do not have the requisite expertise in the field and that the engagement of a private counsel who is competent and experienced is required. Needless to state, the engagement of private counsel can only be sanctioned for compelling reasons and in the public interest and not to protect or save a particular individual or for any other ulterior reason.' (para 21, pp.132- 133) 'The Federal Government and the provincial governments have a host of law officers who are paid out of the public exchequer. If a government contends that none amongst its law officers are capable of handling cases then the question would arise why have incompetent persons been appointed. In such a scenario the public suffers twice, firstly they have to pay for incompetent law officers, and secondly, they have to pay again for the services of competent counsel the government engages. The public exchequer is not there to be squandered in this manner.' (para 17, p.130)

Conclusion: i) Neither Askari Housing nor its Officer Incharge is a separate entity established by law and has no locus standi to initiate and defend legal proceeding.
ii) Officer Incharge Army Housing Directorate cannot engage a private counsel to represent him in court.

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2. **Supreme Court of Pakistan**
M/s Sprint Oil and Gas Services Pakistan FZC, Islamabad v. Oil and Gas Development Company Limited (OGDCL), Islamabad
Civil Petition No.740 of 2021
Mr. Justice Qazi Faez Isa, CJ., Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._740_2021.pdf

Facts: The petitioner company carried out cementation works for OGDCL under the contracts and the subject dispute pertains to the sales tax paid by it on the said works. OGDCL refused to reimburse the sales tax paid by the petitioner, therefore, the petitioner writ petition filed before Islamabad High Court which was allowed. The respondent filed intra court appeal against said decision which was accepted, hence this civil petition.

Issues: i) Whether High Court of any Province can interpret law enacted by all provincial legislatures?
ii) Whether jurisdiction of High Court can be invoked in matters of disputed facts?
iii) Whether parties can confer jurisdiction upon court if otherwise court has no jurisdiction?

Analysis: i) Pakistan is a Federation comprising of four provinces and the Islamabad Capital Territory. The Constitution provides a High Court for each province and, subsequently, the Islamabad High Court was established in 2010. Each province can enact laws with regard to their respective territories, and only the High Court of the said province can interpret them. Therefore, the four provincial laws (Sindh Sales Tax on Services Act, 2011, Punjab Sales Tax on Services Act, 2011, Khyber Pakhtunkhwa Finance Act, 2013, and Balochistan Sales Tax on Services Act, 2015.) could only have been interpreted by the High Court of the province in which they had been enacted, and not by the Islamabad High Court.
ii) The High Court's jurisdiction under Article 199 of the Constitution may also not be invoked when contracts have to be interpreted, and all the more so when they are technical and/or complex nor when evidence is required to be recorded. In the exercise of its writ jurisdiction, under Article 199 of the Constitution, a High Court also does not enter into the realm of disputed facts.
iii) Parties cannot confer jurisdiction on a court. This established principle was recently reiterated by Supreme Court in the case of Eden Builders Pvt. Ltd. Lahore v Muhammad Aslam: 'It is settled proposition of law that the parties cannot by agreement confer jurisdiction upon any court when otherwise the court has no jurisdiction.'

Conclusion: i) Each province can enact laws with regard to their respective territories, and only the High Court of the said province can interpret them.
ii) In the exercise of its writ jurisdiction, under Article 199 of the Constitution, a High Court does not enter into the realm of disputed facts.
iii) Parties cannot confer jurisdiction upon court if otherwise court has no jurisdiction.

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3. **Supreme Court of Pakistan**
Mehmood Khan and others v. Sara Akhtar
Civil Petition No.3030 of 2021
Mr. Justice Qazi Faez Isa HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3030_2021.pdf

Facts: The Respondent filed a suit seeking declaration and cancellation of sale mutations. The suit was decreed by the trial court and the decision was upheld in appeal while the civil revision, filed before the Lahore High Court, was also dismissed.

Issue: Whether the burden to establish a sale and sale mutation lay upon the beneficiary thereof?

Analysis: The burden to establish the sales and the sale mutations, lay upon the beneficiaries thereof, the petitioners, but they failed to discharge it, and when the same was not discharged it may be stated to constitute fraud.

Conclusion: The burden to establish a sale and sale mutation lay upon the beneficiary thereof.

4. **Supreme Court of Pakistan**
Supreme Court Bar Association of Pakistan through its Secretary, Islamabad and others etc v. Federation of Pakistan through Secretary, Cabinet Division, Islamabad and others.
Constitution Petition Nos.32 and 36 of 2023
Pakistan Tehreek-e-Insaf (PTI), Islamabad through its Secretary General and another etc v. Election Commission of Pakistan through Chief Election Commissioner, Islamabad and others etc.
Civil Misc. Appeal Nos.118 and 119 of 2023 in Const.P.Nil/2023
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-Ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/const.p._32_2023_04112023.pdf

Facts: Through these Constitutional Petitions, along with civil misc. Appeals, the petitioners sought the early elections in the country.

Issues: i) Whether it is Constitutional duty of President and Election Commission to appoint a date of General Elections and to issue notification of Election Programme respectively within ninety days after dissolution of Assembly?
ii) Whether a census is followed by delimitation of constituencies?
iii) Whether every constitutional body must act in accordance with the mandate of the Constitution without interference into the constitutional jurisdiction of another?
iv) Whether obedience to the Constitution and law is an inviolable obligation of every citizen?
v) Whether President can dissolve the National Assembly, once the requisite number of members has given a notice of a resolution for a vote of no confidence?
vi) Whether Prime Minister facing a vote of no confidence can advise dissolution of the National Assembly?

Analysis: i) The President of Pakistan was required to 'appoint a date, not later than ninety days from the date of the dissolution, for the holding of a general election to the Assembly under Article 48(5)(a) of the Constitution of the Islamic Republic of Pakistan. And, the Elections Act, 2017 requires the notification of the Election Programme, including the date of the general election...Article 224(2) of the Constitution also requires that general election 'shall be held within a period of ninety days after the dissolution'.
ii) A census is followed by delimitation. Article 222(b) of the Constitution empowers Parliament to make laws providing for the 'delimitation of constituencies', and Delimitation of Constituencies is provided in Chapter III of the Elections Act, 2017.
iii) The Supreme Court and the holder of every constitutional office and every constitutional body, including the President and the ECP, must act in accordance with the mandate of the Constitution. Abiding by the Constitution is not optional.

It is equally important that no institution transgresses into the constitutional jurisdiction of another…Constitutional office holders must adhere to the Constitution; fulfil the duties assigned to them as a sacred trust, and divest themselves from all that is outside their constitutional domain; only then do they serve the people of Pakistan.

iv) The higher the constitutional office or body the greater is the responsibility. Obedience to the Constitution and law is an inviolable-obligation of every citizen, however, an added responsibility and obligation is placed on all those who assume their office by taking an oath. The President takes the prescribed oath and so too the Chief Election Commissioner and Members of the ECP. The Constitution has subsisted for fifty years; there is no longer any excuse to remain ignorant of the Constitution.

v) The Constitution clearly mandated that once the requisite number of members had given a notice of a resolution for a vote of no confidence in the National Assembly, the power to advise dissolution of the National Assembly no longer remained with the Prime Minister. Therefore, the President could not dissolve the National Assembly…

vi) In the case reported as Pakistan Peoples Party Parliamentarians v Federation of Pakistan. It was pointed out by the Chief Justice and four Judges of Supreme Court what was manifestly clear, that a Prime Minister facing a vote of no confidence could not advise the dissolution of the National Assembly.

Conclusion: i) Yes, it is Constitutional duty of President and Election Commission to appoint a date of General Elections and to issue notification of Election Programme respectively, within ninety days after dissolution of Assembly.

ii) Yes, a census is followed by delimitation of constituencies.

iii) Yes, every constitutional body must act in accordance with the mandate of the Constitution without interference into the constitutional jurisdiction of another.

iv) Yes, obedience to the Constitution and law is an inviolable obligation of every citizen.

v) President cannot dissolve the National Assembly, once the requisite number of members has given a notice of a resolution for a vote of no confidence.

vi) Prime Minister facing a vote of no confidence cannot advise dissolution of the National Assembly.

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5. **Supreme Court of Pakistan**
Cantonment Board Faisal and another v. Habib Bank Limited, Karachi and another
Civil Appeals No.1363 to 1365 of 2018
Civil Misc. Application No. 4728 of 2023
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1363_2018.pdf

Facts: These Civil Appeals, assailing the judgment of a Division Bench of the High Court, are filed by the Cantonment Boards. The Cantonment Boards had levied provincial taxes in respect of professions, trades, callings and employments mentioned in Article 163 of the Constitution of the Islamic Republic of Pakistan.

Issues: i) Whether there is any specific provision in the Constitution which empowers the provinces to impose professional taxes?
ii) Whether the decisions of Supreme Court are binding on all executive functionaries, including cantonment boards?

Analysis: i) Article 163 of the Constitution specifically empowers the provinces to impose the professional taxes; it is the only provision in the Constitution which permits or authorizes this, and it must be given effect to; it cannot be disregarded or whittled down by untenable submissions.
ii) Decisions of Supreme Court are binding on all executive functionaries, including cantonment boards, as mandated by Article 189 of the Constitution. Therefore, section 60(1) of the Cantonments Act and its Schedule VII to the extent that they may authorize the imposition of the professional taxes are ultra vires the Constitution.

Conclusion: i) Article 163 of the Constitution specifically empowers the provinces to impose the professional taxes.
ii) Decisions of Supreme Court are binding on all executive functionaries, including cantonment boards, as mandated by Article 189 of the Constitution.

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6. **Supreme Court of Pakistan**
Human Right Case No. 82928 of 2018
Mr. Justice Qazi Faez Isa HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/h.r.c._82928_2018.pdf

Facts: The petitioner had written to the Human Rights Cell in the Supreme Court and leveled serious allegations against respondent. The matter was put up in Chamber before the then Chief Justice. As per the report of the Director-General, Human Rights Cell, the then Chief Justice had by order summoned both parties for hearing in his Chamber. The dispute between the private parties was attended to and decided.

Issue: Whether the Chief Justice in Chamber can summon parties under Article 184(3) of the Constitution on a complaint written to the Human Rights Cell of the Supreme Court?

Analysis: Neither can the Chief Justice nor any Judge in Chamber alone can pass an order beyond what is provided for in the Rules. Therefore, the proceedings that the former Chief Justice undertook with regard to the said matter, in our considered opinion, were not legal proceedings, and were of no legal effect. The Human

Rights Cell can only consider the complaints it receives, and if the same meet the test of Article 184(3) of the Constitution, that is, the matter is one of public importance with reference to enforcement of any of the Fundamental Rights put it up for consideration of the Chief Justice of Pakistan, and the Chief Justice in Chamber could only direct that it be numbered and put up for consideration in Court. However, since the promulgation of the Supreme Court (Practice and Procedure) Act, 2023 ('the Act') the Chief Justice has lost even this power as now the Committee, under section 2(1) of the Act, comprising of the Chief Justice and the next two senior Judges, will determine whether the matter should be numbered and fixed in Court for hearing.

Conclusion: The Chief Justice in Chamber cannot summon parties under Article 184(3) of the Constitution on a complaint written to the Human Rights Cell of the Supreme Court rather the Committee, under section 2(1) of the Supreme Court (Practice and Procedure) Act, 2023, comprising of the Chief Justice and the next two senior Judges, will determine whether the matter should be numbered and fixed in Court for hearing.

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7. **Supreme Court of Pakistan**
Javed Hameed, etc. v. Aman Ullah, etc.
Civil Petition No.1990-L of 2017
Mr. Justice Qazi Faez Isa, CJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1990_l_2017.pdf

Facts: Trial court closed the right of petitioners to lead evidence and dismissed the suit and such decision was upheld by the appellate court and then by the revisional court. Hence, this civil petition.

Issue: How courts can ensure that litigants do not abuse the process of court?

Analysis: Courts must be vigilant that the process of the court is not abused, and ensure that legitimate owners are not deprived of their properties. From the date of filing of the suit till date 14 years have elapsed, and petitioners who were not entitled to the said land continue in possession of it, probably thinking there would no consequences for their actions. This impression must be corrected. Courts must impose costs whenever it is required, stem frivolous litigation and stop the abuse of the process of the court in perpetuating wrongdoing.

Conclusion: Courts must impose costs whenever it is required, stem frivolous litigation and stop the abuse of the process of the court in perpetuating wrongdoing.

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8. **Supreme Court of Pakistan**
Human Right Case No. 8157-P of 2023
Mr. Justice Qazi Faez Isa HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/h.r.c._8157_p_2023.pdf

Facts: The applicant filed an application under Article 184(3) of the Constitution of the Islamic Republic of Pakistan leveling serious allegations of misuse of office by a senior official of the Armed Forces while working in the Inter Services Intelligence (ISI).

Issue: Whether Article 184(3) of the Constitution can be invoked in respect of a private complaint/grievance?

Analysis: The allegations are of an extremely serious nature, and if true, undoubtedly would undermine the reputation of the Federal Government, the Armed Forces, ISI and Pakistan Rangers, therefore, they cannot be left unattended. However, the nature of a case filed under Article 184(3) of the Constitution is different from other cases, for a number of reasons. Firstly, the Supreme Court under Article 184(3) of the Constitution exercises *original power*, and whenever *original power* is exercised it must be done cautiously. Secondly, where there exists other forum(s) to attend to the same it is best that they first do so. Thirdly, against the decision of a High Court appeals may come before this Court under Article 185 of the Constitution. Fourthly, direct intervention by this Court under Article 184(3) of the Constitution may adversely affect the rights of others.

Conclusion: Article 184(3) of the Constitution cannot be invoked in respect of a private complaint/grievance.

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9. **Supreme Court of Pakistan**
Province of Punjab thr. the Deputy Commissioner, Collector District Gujranwala and others v. Zulfiqar Ali and another
Civil Petition No.386-L of 2021
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.p._386_l_2021.pdf

Facts: The facts leading to the filing of the present civil appeal, briefly, are that on nine *marlas* of land a road was constructed by petitioners. However, since no compensation was paid for the said land nor was it acquired pursuant to the Land Acquisition Act, 1894, the owner filed a suit in the year 1997 and though the suit was dismissed the appeal against the same was allowed and the judgment of the appellate court was upheld through the impugned judgment.

Issues: i) When a person can be compulsorily deprived of property?
ii) What is the value of public resources and court time?

Analysis: i) …They deemed it fit to challenge a matter of little financial significance and do so contrary to the provisions of the Constitution of the Islamic Republic of Pakistan which guarantees as a fundamental right the right to acquire, hold and dispose of property (Articles 23 and 24), and being oblivious to the fact that a person can only be compulsorily deprived of property provided compensation therefor is paid.
ii) This is the fourth Court before which the Government of Punjab is a party, and it pleads by disregarding the Constitution and the law. Not only have public resources been wasted, but also Court time, both of which are a trust held on behalf of the people. The respondents who were deprived of their land must have spent money and time with regard to a case which should have never seen a court of law, provided the petitioners had abided by the Constitution and the law.

Conclusion: i) A person cannot be compulsorily deprived of his property against Articles 23 and 24 of the Constitution of Pakistan, provided compensation thereof is paid.
ii) Public resources and Court time are a trust held on behalf of the people.

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10. **Supreme Court of Pakistan**
Civil Review Petitions No.266 of 2019 etc. along with Civil Miscellaneous Applications No.8270 and 8288 of 2023 etc. in Suo Motu Case No.7 of 2017
Mr. Justice Qazi Faez Isa, HCJ, Mr. Justice Amin-Ud-Din Khan, Mr. Justice Athar Minallah
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p._266_2019_01112023.pdf

Facts: The petitioners/appellants aggrieved by the judgment of Supreme Court filed these Civil Review Petitions along with Civil Miscellaneous Applications.

Issues: i) Whether legislature has assigned certain responsibilities and obligations to PEMRA?
ii) What is limitation period for filling review petition against the judgement of Supreme Court?

Analysis: i) PEMRA is a statutory organization; the legislature has assigned it certain responsibilities and obligations.
ii) If a party is aggrieved by the Judgment of Supreme Court, its review can be sought, 'within thirty days after pronouncement of the judgment, or, as the case may be, the making of the order, which is sought to be reviewed', as stipulated in Order XXVI, rule 2 of the Supreme Court Rules, 1980...

Conclusion: i) Yes, legislature has assigned certain responsibilities and obligations to PEMRA.
ii) The review petition can be sought against the judgement of Supreme court within thirty days.

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11. **Supreme Court of Pakistan**
Muhammad Atif v. The State etc.
Criminal Petition Crl.P. 298 / 2023
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi , Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._298_2023.pdf

Facts: The petitioner sought leave to appeal against an order of the Lahore High Court, whereby the post-arrest bail had been declined to him for the offences punishable under Sections 302, 148 and 149 of the Pakistan Penal Code ("PPC").

Issue: What is the benchmark for applying the rule of consistency in granting bail to an accused?

Analysis: …The rule of consistency applied in bail matters is premised on the fundamental right to equality before the law guaranteed under Article 25 of the Constitution of Pakistan. This right to equality before the law ensures that persons similarly placed in similar circumstances are to be treated in the same manner. In other words, among equals the law should be equally administered. The like should be treated alike. Article 25 of the Constitution does not prohibit different treatment to persons who are not similarly placed or who are not in similar circumstances. To claim equality before the law an accused person must therefore show that he and his co- accused who has been granted bail are similarly placed in similar circumstances. In other words, he must show that the prosecution case, as a whole, against him is at par with that against his co -accused who has been granted bail, and not distinguishable in any substantial aspect. The rule of consistency is also pillared on Articles 4 and 10A of the Constitution ensuring that level playing field and fairness is maintained in adjudicating cases of co-accused. The right to liberty under Article 9 of the Constitution has to be extended fairly and without discrimination to an applicant seeking bail. The rule of consistency in bail matters is fundamental to ensuring fairness, reducing arbitrary decision -making, and maintaining public confidence in the criminal justice system. It's a key aspect of the rule of law, ensuring that all individuals are treated equally under the law…The rule of consistency in bail matters is attracted and applied after the grant of bail to a co-accused. Grant of bail by a court considers several factors like the contents of the FIR, the incriminating material collected by the police during investigation, the past history of the accused, etc. The grounds which form the basis for the grant of bail to a co-accused is thus the benchmark for grant of bail to the accused under the rule of consistency. Therefore, the court has to assess whether the role of the accused in the FIR, examined in the background of the material collected by the Police is the same as that of the co-accused, who has been granted bail. It is this congruence in the case of the co-accused and the accused that attracts the rule of consistency.

Conclusion: Benchmark for applying the rule of consistency is not only the role attributed to the accused in the FIR but also the material collected in the investigation.

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12. **Supreme Court of Pakistan**
M/s Fun Infotainment (Pvt) Limited/NEO T.V., Lahore. v. Pakistan Electronic Media Regulatory Authority through its Chairman, Islamabad and others
Civil Petition NO. 5438 OF 2021
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Jamal Khan Mandokhail, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._5438_2021.pdf

Facts: The matter originated with a complaint filed before the Council of Complaints of the Pakistan Electronic Media Regulatory Authority alleging that the petitioner violated the Electronic Media (Programmes and Advertisements) Code of Conduct 2015 in a programme. The COC found the contents of the programme to be violative of the Code of Conduct and recommended fine to be imposed on the petitioner. The said recommendation was approved by the Chairman PEMRA. The High Court dismissed the appeal filed against the order of the Chairman PEMRA. The petitioner now seeks leave of this Court to appeal against the order of the High Court.

Issues: i) Whether PEMRA has been given the power to delegate any of its powers, responsibilities or functions?
ii) Whether delegation envisaged under Section 13 of the Pakistan Electronic Media Regulatory Authority Ordinance 2002 shall be structured with conditions prescribed under the rules?

Analysis: i) A look at Section 26 of the Pakistan Electronic Media Regulatory Authority Ordinance 2002 suggests that PEMRA has been given the power to delegate any of its powers, responsibilities or functions to the Chairman or a member or any member of its staff, or an expert, consultant, adviser, or other officer or employee of PEMRA.
ii) The legislature has intended that the exercise of delegation envisaged under Section 13 of the Pakistan Electronic Media Regulatory Authority Ordinance 2002 shall be structured with conditions prescribed under the rules framed with the approval of the Federal Government.

Conclusion: i) PEMRA has been given the power to delegate any of its powers, responsibilities or functions.
ii) The legislature has intended that the exercise of delegation shall be structured with conditions prescribed under the rules.

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13. **Supreme Court of Pakistan**
Bashir Ahmad v. Addl. District Judge, Hafizabad & others
Civil Petition No. 5918/2021
Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice Irfan Saadat Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._5918_2021.pdf

Facts: The petitioner's grandson instituted a family suit through his mother for his maintenance against his father and the petitioner's son. The suit was decreed and a petition was filed for the execution of the decree against the judgment debtor. The presence of the judgment debtor could not be procured to pay the decretal amount nor could the decree holder trace out any of his property. The decree holder found the revenue record of the property owned by the petitioner, grandfather and requested the executing court to attach that property for recovery of the decretal amount, which was accepted. The petitioner filed an application for the release of his property from attachment, pleading that he had neither been a party to the suit nor had any decree been passed against him. The executing court dismissed his application. The petitioner challenged the orders of the executing court in the High Court through writ petition which was also dismissed; hence, this petition for leave to appeal.

Issues: i) Whether just ends justify unjust means?
ii) Whether a decree for maintenance passed against the father of a child can be executed against the grandfather or the child has to institute a suit for maintenance against his grandfather?
iii) What are conditions upon which grandfather is under obligation to maintain his grandchild?

Analysis: i) 'Doing what is right may still result in unfairness if it is done in the wrong way.' The right thing must be done in the right way. Just ends do not justify unjust means. The present case is a classic instance of doing a right thing in a wrong way. In their urge to provide a child with due maintenance at the earliest, the courts below have circumvented the due process of law, and instead of achieving the desired result, have thrown the parties into a protracted, unnecessary litigation. Courts in this country, from top to bottom, must always remember that the matters of life, liberty, body, reputation or property of all persons must be dealt with in accordance with law and that every person appearing before them is entitled to a fair trial and due process for the determination of his civil rights and obligations or in any criminal charge against him.
ii) Under the Islamic law of maintenance of the children, if the father of a child has died or the father, being a poor person, has no financial resources to maintain his child, the obligation to maintain such child passes on to his grandfather provided he is financially in easy circumstances.4 This statement of Islamic law is not disputed before us. The matter of contention between the parties that requires determination by us is: whether a decree for maintenance passed against the father

of a child can be executed against the grandfather or the child has to institute a suit for maintenance against his grandfather, in case no property of his father, the judgment debtor, is found for the execution of the decree… This is the requirement of the fundamental right guaranteed by Article 10A of the Constitution of Pakistan, which mandates that for the determination of his civil rights and obligations, a person shall be entitled to a fair trial and due process. The matter of providing maintenance to his grandchild is a matter of civil obligation; for its determination, the grandfather must be provided with a fair trial and due process. Both the above conditions, the fulfillment of which brings a grandfather under obligation to maintain his grandchild, are factual propositions, not legal ones. Their existence or non-existence can, therefore, only be proved through producing their respective evidence by the parties in a properly instituted suit for maintenance. Such evidence cannot be recorded in the execution proceeding nor can any determination be made therein by the executing court on these facts. The recording of evidence and making of findings on these facts in an execution proceeding would be a useless exercise, as despite making a positive finding, an executing court cannot modify the decree5 nor can it execute the decree against a person who was not a party to the suit.6 Further, the Family Courts Act 1964 prescribes a procedure for how the claims of maintenance are to be entertained and decided by the Family Courts. Such a claim made against a grandfather operates against his property; he is, therefore, entitled to be dealt with the procedure prescribed by law, i.e., the Family Courts Act, as per Article 4 of the Constitution. We, therefore, hold that a decree for maintenance passed against the father of a child cannot be executed against the grandfather, and the child has to institute a suit for maintenance against his grandfather, in case no property of his father, the judgment debtor, is found for the execution of the decree.

iii) As it is evident from the above statement of the Islamic law of maintenance of the children, the obligation of a grandfather to maintain his grandchild is dependant upon two conditions: (i) the father of the child must be a poor person who has no financial resources to maintain that child, and (ii) the grandfather of the child must be a person who is financially in easy circumstances. In case either of these conditions is not fulfilled, the grandfather is not under any obligation to maintain his grandchild. These two conditions are thus also the grounds of defence available to a grandfather against whom his grandchild makes a claim of maintenance. A child who claims his maintenance from his grandfather has to prove these two conditions, and the grandfather must be provided with an opportunity to defend the claim made against him by rebutting the existence of either of these two facts…

Conclusion: i) Just ends do not justify unjust means.

ii) A decree for maintenance passed against the father of a child cannot be executed against the grandfather, and the child has to institute a suit for maintenance against his grandfather, in case no property of his father, the judgment debtor, is found for the execution of the decree.

iii) The obligation of a grandfather to maintain his grandchild is dependant upon two conditions: (i) the father of the child must be a poor person who has no financial resources to maintain that child, and (ii) the grandfather of the child must be a person who is financially in easy circumstances.

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14. **Supreme Court of Pakistan**
The Commissioner Inland Revenue, Lahore v. M/s. Atta Cables (Pvt.) Ltd., Lahore, etc.
Civil Appeal No.247 of 2021
Mr. Justice Munib Akhtar, Mr. Justice Shahid Waheed, Ms. Justice Musarrat Hilali
https://www.supremecourt.gov.pk/downloads_judgements/c.a._247_2021.pdf

Facts: This appeal arises out of the Income Tax Ordinance, 2001 ("Ordinance") and relates to the tax year 2015. According to the department (i.e., the Commissioner concerned) the respondent taxpayer came within the ambit of s. 214D of the Ordinance, which had been newly added by the Finance Act, 2015 and which provided for automatic audit under s. 177 of those taxpayers that fulfilled the conditions thereof.

Issues: i) Whether a taxpayer in default automatically comes within the ambit of s. 177 of the Ordinance?
ii) Whether in terms of other provisions of the Ordinance selection for audit is automatic?
iii) What is the effect of any deviation or discrepancy, howsoever minor, slight or even inconsequential the conditions that exist for the section 214D to be attracted?
iv) What will be the status of application for the grant of extension for the purposes of s. 214D, if the Commissioner did not grant or refuse the application in writing?

Analysis: i) A taxpayer in default automatically came within the ambit of s. 177, the principal provision in the Ordinance relating to audit. The audit requirements of s. 177 are broadly stated and certainly impose a heavy, cumbersome and onerous burden on the taxpayer.
ii) In the ordinary course, and in terms of other provisions of the Ordinance which need not be considered in detail, selection for audit is not automatic but is a result that comes about after going through various statutory filters, including such as are set out in various circulars issued by the Federal Board of Revenue.
iii) Section 214D, inasmuch as it applied automatically (subject to certain exceptions contained in its subsections (3) and (4)) and therefore bypassed the filters otherwise built into the Ordinance before an audit could be undertaken, had therefore to be construed and applied strictly. More particularly, the conditions that had to exist for the section to be attracted had to apply precisely. Any deviation or discrepancy, howsoever minor, slight or even inconsequential it may otherwise appear to be would apply, and go, in favor of the taxpayer.

iv) It is to be noted that subsection (3) of s. 119 specifically requires the Commissioner to grant the extension in writing. Since s. 214D had to be applied exactly, this meant that for purposes of this provision the refusal of the Commissioner also had to be in writing. In other words, any inaction on the part of the Commissioner, or a failure to reject or refuse the application for extension in any manner other than in writing, would mean that for the purposes of s. 214D the application would be regarded as pending. Clearly therefore, until the application for extension was actually disposed of by an order in writing the section would not become applicable.

Conclusion: i) A taxpayer in default automatically comes within the ambit of s. 177, the principal provision in the Ordinance relating to audit.
ii) See above in analysis clause.
iii) The conditions that had to exist for the section to be attracted had to apply precisely. Any deviation or discrepancy, howsoever minor, slight or even inconsequential it may otherwise appear to be would apply, and go, in favor of the taxpayer.
iv) Any inaction on the part of the Commissioner, or a failure to reject or refuse the application for extension in any manner other than in writing, would mean that for the purposes of s. 214D the application would be regarded as pending.

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15. **Supreme Court of Pakistan**
Maqsood Alam v. The State etc.
Criminal Petition Nos. 1710-L & 1329 Of 2017
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1710_l_2017.pdf

Facts: Petitioner along with four co-accused was tried in a private complaint lodged under Sections 302/109/34 PPC. The Trial Court vide its judgment while acquitting the co-accused of the petitioner, convicted the petitioner under Section 302(b) and sentenced him to death on two counts. He was also directed to pay Rs.100,000/- on two counts as compensation to the legal heirs of each deceased or in default whereof to further undergo SI for six months. In appeal the High Court while maintaining the conviction of the petitioner, altered the sentence of death into imprisonment for life on two counts. The amount of compensation and the sentence in default thereof was also maintained. Benefit of Section 382-B Cr.P.C. was also extended to the petitioner.

Issues: i) Whether the same evidence can be relied upon to convict the accused, when the ocular account of the eye-witnesses has been disbelieved by the Trial Court against the co-accused, who was alleged to have played a similar role in the occurrence?
ii) Whether the burden of proof is always on prosecution to prove its case beyond reasonable doubt?

Analysis: i) When the ocular account of the eye-witnesses had been disbelieved by the Trial Court against the acquitted co-accused, who was alleged to have played a similar role in the occurrence, then the same evidence could not be relied upon to convict the accused on capital punishment unless there was an independent corroboration and some strong incriminating evidence to the extent of his involvement in commission of the offence but as discussed above the same is lacking in the instant case.

ii) It is settled principle of law that the conviction must be based on unimpeachable, trustworthy and reliable evidence. Any doubt arising in prosecution case is to be resolved in favour of the accused and burden of proof is always on prosecution to prove its case beyond reasonable doubt.

Conclusion: i) See above in analysis clause.

ii) The burden of proof is always on prosecution to prove its case beyond reasonable doubt.

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16. **Supreme Court of Pakistan**
Faqir Muhammad v. Khursheed Bibi and others etc.
Civil Petitions No.1877-L and 1878-L of 2016
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1877_l_2016.pdf

Facts: These Civil Petitions for leave to appeal have been brought to challenge the Judgments passed by the learned Division Bench of the Lahore High Court, Lahore, whereby both the appeals were dismissed being barred by time with the findings that the petitioner/appellant completely failed to show his bona fide of due care in prosecuting the case and also remained unsuccessful in explaining the delay incurred in filing the appeals.

Issues: i) Whether it is onerous duty of the Court, including the Officer of the Appellate Court or any staff member of the Court to accept the presentation of the memo of appeal before admission and diligently examine the memo of appeal, and judgment and decree, including all supporting documents, to ensure that everything is in order, and, if there is any doubt in the mind of the concerned Court clerk/official with regard to jurisdiction, they should raise the objection(s) and bring it to the attention of the Court to resolve it?

ii) Whether the parties can, by mutual consent, take away the jurisdiction vested in any Court of law?

iii) Whether an inadvertent error or lapse on the part of Court may be reviewed?

iv) Whether the Court must examine what fault, if any, has been committed by the Court on account of which a litigant has been made to suffer; then the Court must consider whether the benefit of the rule can or should be extended to a negligent litigant who has failed to make out a sufficient cause in terms of Section 5 of the Limitation Act 1908?

v) Whether the scope and niceties of Sections 5 and 14 of the Limitation Act 1908 are distinct in application and concentration but the purpose is almost the same?

Analysis: i) A survey of the aforesaid provisions cited from the CPC emphasizes the onerous duty of the Court, including the Officer of the Appellate Court or any staff member of the Court (clerk of court/chief ministerial officer) who has been authorized and assigned the task to accept the presentation of the memo of appeal before admission and diligently examine the memo of appeal, and judgment and decree, including all supporting documents, to ensure that everything is in order, and, if there is any doubt in the mind of the concerned Court clerk/official with regard to jurisdiction, they should raise the objection(s) and bring it to the attention of the Court to resolve it; and if the Court concludes at the time of admission that the appeal has been filed at the wrong forum, whether due to a lack of territorial or pecuniary jurisdiction, or some other ancillary or incidental reasons, the memo of appeal should be promptly returned to the appellant to elect the right remedy and forum to avoid rendering the decision of the Court coram non judice at the end of the day.

ii) The examination and evaluation of jurisdiction at the initial stage is also significant pursuant to the well-settled explication of law that the parties cannot, by mutual consent, take away the jurisdiction vested in any Court of law, nor can they confer jurisdiction to any Court not vested in it by law.

iii) It is also a well settled elucidation of law that an inadvertent error or lapse on the part of Court may be reviewed in view of the renowned legal maxim "*actus curiae neminem gravabit*", recognized by both local and foreign jurisdictions which articulates that no man should suffer because of the fault of the Court or that an act of the Court shall prejudice no one. This maxim is rooted in the notion of justice and is a benchmark for the administration of law and justice to ensure that justice has been done with strict adherence to the law and for undoing the wrong so that no injury should be caused by any act or omission of the Court.

iv) In the dictum rendered by this Court in the Khushi Muhammad (supra), it was opined that the principle "*actus curiae neminem gravabit*" has no application where a litigant approaches a wrong forum even if it is entertained by the Court staff. Thus no condonation of delay can be availed on this principle, but in unison as a rider and precondition it has been made obligatory that the Court must examine what fault, if any, has been committed by the Court on account of which a litigant has been made to suffer; then the Court must consider whether the benefit of the rule can or should be extended to a negligent litigant who has failed to make out a sufficient cause in terms of Section 5 of the Limitation Act.

v) No doubt, the scope and niceties of Sections 5 and 14 of the Limitation Act are distinct in application and concentration but the purpose is almost the same. Section 5 of the Limitation Act is germane to the extension of period in appeal or application/revision or review of the judgment, or for leave to appeal, or any other application to which this Section is made applicable by or under any enactment and the aforesaid genre of proceedings may be admitted after the period of

limitation prescribed, provided the Court is satisfied that the appellant or applicant has brought to light sufficient cause for not preferring the appeal or application within the prescribed period of limitation. On the other hand, Section 14 of the Limitation Act pertains to the exclusion of time of proceeding bona fide in a Court without jurisdiction, and, in computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, due to the defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Conclusion: i) It is onerous duty of the Court, including the Officer of the Appellate Court or any staff member of the Court to accept the presentation of the memo of appeal before admission and diligently examine the memo of appeal, and judgment and decree, including all supporting documents, to ensure that everything is in order, and, if there is any doubt in the mind of the concerned Court clerk/official with regard to jurisdiction, they should raise the objection(s) and bring it to the attention of the Court to resolve it?

ii) The parties cannot, by mutual consent, take away the jurisdiction vested in any Court of law, nor can they confer jurisdiction to any Court not vested in it by law.

iii) An inadvertent error or lapse on the part of Court may be reviewed in view of the renowned legal maxim "*actus curiae neminem gravabit*".

iv) The Court must examine what fault, if any, has been committed by the Court on account of which a litigant has been made to suffer; then the Court must consider whether the benefit of the rule can or should be extended to a negligent litigant who has failed to make out a sufficient cause in terms of Section 5 of the Limitation Act 1908.

v) The scope and niceties of Sections 5 and 14 of the Limitation Act 1908 are distinct in application and concentration but the purpose is almost the same.

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17. **Supreme Court of Pakistan**
United Bank Limited (UBL) through its President and others v. Jamil Ahmed and others
Civil Petition No.2997 of 2021
Mr. Justice Yahya Afridi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2997_2021.pdf

Facts: The services of the respondent no. 01 were terminated by petitioner's management and being aggrieved the respondent no. 01 filed grievance petition in Labour Court which was allowed. The petitioner assailed the order of Labour Court before Full Bench of NIRC through appeal which was dismissed, thereafter, petitioners filed writ petition before High Court which was also dismissed. Hence, this CPLA.

Issues: i) Whether status of 'workman' or worker, or Manager, Officer depends on

nomenclature of the post?
ii) On whom burden of prove lies, if an employee asserts that he was working as worker or workman?
iii) Under what circumstances, appeal under section 59 of Industrial Relations Act, 2012 lies?
iv) What are powers of Full Bench of NIRC under IRA, 2012 while disposing of appeal?
v) What is right of appeal and what are duties of appellate court?
vi) Whether concurrent findings recorded by lower fora can be interfered with by High Court in Constitutional Jurisdiction?

Analysis: i) In order to adjudicate whether a person is performing his duties as a 'workman' or 'worker', or Manager, Officer and or duties of supervisory nature, the pith and substance of the adjudication predominantly depends on the nature of duties and not on the basis of the nomenclature of the post.
ii) In case the employee asserts that he was performing duties as workman and such contentions are opposed by the management, then in such eventuality the burden of proof lies upon the employee to substantiate that he was in fact performing the duties of a 'workman' and the mere nomenclature of the post does not affect his status of employment as worker or workman.
iii) Under Section 59 of the IRA, any person aggrieved by an award or decision given or a sentence or order determining and certifying a collective bargaining unit passed by any bench of the Commission, may, within thirty days of such award, decision, sentence or order prefer an appeal to the Commission.
iv) The Full Bench may confirm, set aside, vary or modify the decision or sentence passed and shall exercise all the powers required for the disposal of an appeal. In addition to the above powers, the Full Bench of the NIRC may, on its own motion, at any time, call for the record of any case or proceedings under this Act in which a Bench within its jurisdiction has passed an order for the purpose of satisfying itself as to the correctness, legality, or propriety of such order, and may pass such order in relation thereto as it thinks fit, provided that no order under this section shall be passed on its own motion revising or modifying any order adversely affecting any person without giving such person a reasonable opportunity of being heard.
v) It is a well settled exposition of law that a right of appeal is a right of entering into a superior court and invoking its aid and interposition to redress the error of the forum below. It is essentially a continuation of the original proceedings as a vested and substantive right of the litigant. It is the duty of the Court and Tribunal to adhere to the applicable law in letter and spirit. It is the foremost duty of the appellate court to determine whether the oral and documentary evidence produced by the parties for and against during the trial fortifies and adds force to the weight of decision or not… It is not the domain or function of appellate court and/or High Court to re-weigh or interpret the evidence, but they can examine whether the impugned judgment or order attains the benchmark of an unflawed judgment;

and whether it is in consonance with the law and evidence and free from unjust and unfair errors apparent on the face of record.

vi) If the concurrent findings recorded by the lower fora are found to be in violation of law or based on flagrant and obvious defect floating on the surface of record, then it cannot be treated as being so sacrosanct or sanctified that it cannot be reversed by the High Court in the Constitutional jurisdiction vested in it by Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 as a corrective measure in order to satisfy and reassure whether the impugned decision is within the law or not and if it suffers any jurisdictional defect, in such set of circumstances, the High Court without being impressed or influenced by the fact that the matter reached the High Court under Constitutional jurisdiction in pursuit of the concurrent findings recorded below, can cure and rectify the defect.

Conclusion: i) The status of 'workman' or worker, or Manager, Officer depends on the nature of duties performed and not on the nomenclature of the post.

ii) If an employee asserts that he was working as worker or workman, burden of prove lies on employee.

iii) Under Section 59 of the IRA, any person aggrieved by an award or decision given or a sentence or order determining and certifying a collective bargaining unit passed by any bench of the Commission, may, within thirty days of such award, decision, sentence or order prefer an appeal to the Commission.

iv) The Full Bench may confirm, set aside, vary or modify the decision or sentence passed and shall exercise all the powers required for the disposal of an appeal. Furthermore, NIRC may call for the record of any case or proceedings on its own motion under IRA, 2012.

v) Right of appeal is a right of entering into a superior court and invoking its aid and interposition to redress the error of the forum below which is a continuation of the original proceedings as a vested and substantive right of the litigant. It is the foremost duty of the appellate court to determine whether the oral and documentary evidence produced by the parties for and against during the trial fortifies and adds force to the weight of decision or not.

vi) If the concurrent findings recorded by the lower fora are found to be in violation of law or based on flagrant and obvious defect floating on the surface of record, the High Court without being impressed or influenced by the fact that the matter reached the High Court under Constitutional jurisdiction in pursuit of the concurrent findings recorded below, can cure and rectify the defect.

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18. **Lahore High Court**
Sarwar Masih v. Chairman, Punjab Labour Appellate Tribunal & others.
Writ Petition No.141 of 2017
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC5572.pdf

Facts: The petitioner submitted an application for his reinstatement in service which was dismissed. He filed Grievance Petition before the Punjab Labour Court which was

dismissed against which he filed appeal before the Punjab Labour Appellate Court, Lahore but without any success as the same was dismissed; hence this petition.

Issues: i) When a person is confined in prison, whether he can only be served through the Superintendent of the prison concerned?
ii) Whether resort to substituted service can only be made when it has been established on record that the person concerned has refused to accept service of summons/notices issued by a forum?
iii) When an employee has been dismissed from service on account of his absence from duty for having been arrested in a criminal case, as and when he is released/acquitted, whether he is entitled for reinstatement in service?
iv) Whether without service of Show Cause Notice, any penultimate order can be passed?
v) Whether a person released on bail, prior to his conviction in a criminal case, can approach his department seeking reinstatement in service?

Analysis: i) It is well established by now that when a person is confined in prison, he can only be served through the Superintendent of the prison concerned. Insofar as the case in hand is concerned, though the learned Law Officer addressed the Court at reasonable length but was unable to give even half a reason for non-issuance of the Show Cause Notices to the petitioner through the Superintendent of the Jail where he was confined.
ii) Resort to substituted service can only be made when it has been established on record that the person concerned has refused to accept service of summons/notices issued by a forum. Though learned Law Officer has argued at length but has not been able to refer any document to show that upon refusal of the petitioner to accept notice issued to him, the competent authority decided to get him served with Show Cause Notice by way of substituted service in the shape of proclamation in newspaper.
iii) According to Rule 54 of the Fundamental Rules, when an employee has been dismissed from service on account of his absence from duty for having been arrested in a criminal case, as and when he is released/acquitted, he is entitled for reinstatement in service.
iv) The observation of the learned Labour Court that since the petitioner used to come to a court of law in afore-referred criminal case, he could conveniently inform the department about his arrest in the said case through his near and dear ones, present in the said court, being alien to the established principle of law that without service of Show Cause Notice, no penultimate order can be passed, carries little weight. Moreover, according to Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 a citizen has inalienable right to be proceeded in accordance with law and if any deviation is noted on the part of the competent authority, the same cannot be allowed to be let unnoticed by the judicial forums.
v) During arguments, learned Law Officer put much emphasis on the fact that as

the petitioner was not acquitted rather he was released from jail, under Section 249 Cr.P.C., the said release cannot be equated with acquittal, thus he was not entitled for his reinstatement in service. In this regard, I do not see eye-to-eye with the learned Law Officer for the reason that even a person released on bail, prior to his conviction in a criminal case, can approach his department seeking reinstatement in service.

Conclusion: i) When a person is confined in prison, he can only be served through the Superintendent of the prison concerned.
ii) Resort to substituted service can only be made when it has been established on record that the person concerned has refused to accept service of summons/notices issued by a forum.
iii) When an employee has been dismissed from service on account of his absence from duty for having been arrested in a criminal case, as and when he is released/acquitted, he is entitled for reinstatement in service.
iv) Without service of Show Cause Notice, no penultimate order can be passed.
v) A person released on bail, prior to his conviction in a criminal case, can approach his department seeking reinstatement in service.

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19. **Lahore High Court**
Abdul Sattar. v Additional District Judge and others
Writ Petition No.36355 of 2019.
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5642.pdf

Facts: Through this constitutional petition filed under Article 199 of Constitution of Islamic Republic of Pakistan, 1973, the petitioner has challenged the vires of order passed by learned appellate court and trial court whereby his guardian petition as father being natural guardian after death of minor's mother under section 25 of the Guardian & Wards Act, 1890, for custody of minor has been dismissed.

Issue: Whether father being natural guardian is entitled to custody of female minor after death of minor's mother?

Analysis: The father being natural guardian after death of female minor's mother can better look after her interest and can take care of her as well as provide her education. Para 355 of the Muhammadan Law has expressly provided right of custody of male paternal relations in default of female relations and the father being natural guardian stands at top priority among male paternal relations.

Conclusion: Father being natural guardian is entitled to custody of female minor after death of minor's mother.

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20. **Lahore High Court**
Rehana Shafqat v Afira Butt and others
Civil Revision No.49064 of 2022
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5631.pdf

Facts: The petitioner has filed Civil Revision under section 115 of C.P.C, against the decision of lower courts wherein the succession petition was accepted on the basis of special oath offered by the petitioner and accepted by the respondent.

Issue: Whether a decision rendered on the basis of special oath is appeal-able or not?

Analysis: The arrangement for disposal of suit/case as agreed by the parties was a sort of compromise, which was lawful and permissible; therefore, the same cannot be assailed through appeal. Moreover, it is the sweet will of the party to get decided the matter in terms of special oath. Therefore, the offer of special oath must be made voluntarily and accepted by the opposite party. It must not be a result of emotional behaviour or give rise to any void agreement .When a party offers for special oath, then it becomes binding upon him and he cannot resile from the same, and he has to face the consequences of the same.

Conclusion: A decision rendered on the basis of special oath is not appealable.

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21. **Lahore High Court**
Muhammad Nawaz and others v. Province of Punjab through Additional Collector and others.
Civil Revision No.176407 of 2018
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5635.pdf

Facts: Tersely, the petitioners instituted a suit for declaration, alleging therein that they may be declared owner in possession of the suit property and gift mutation and exchange mutation may be declared null and void, result of fraud, misrepresentation and result of connivance inter se the respondents and revenue officials. The suit was filed on 01.09.2001, however, the same was withdrawn on 29.01.2004 due to some technical defects with permission to file a fresh suit. Then, fresh suit was filed in the year 2006, which was also withdrawn on 30.11.2010 with permission to file a fresh suit. Again, the petitioners instituted suit on 07.04.2012. The respondents filed an application under Order VII, Rule 11, CPC, seeking rejection of the plaint being barred by law of limitation. The learned trial Court accepted the application and rejected the plaint. The petitioners being aggrieved preferred an appeal but the same was dismissed; hence, the instant revision petition.

Issues: i) Whether fresh plaint could be presented after rejection of plaint under Order VII Rule 11 CPC?

ii) What are the prerequisites to allow withdrawal of suit with permission to file a fresh suit?
iii) What are the eventualities where withdrawal of the suit could be allowed with permission to file a fresh suit?
iv) Whether defect in plaint could be remedied by allowing amendments, if so, what are its preconditions?
v) Whether withdrawal of suit with permission to file fresh suit, have the effect of setting aside the judgment and decree passed against the plaintiff?
vi) Whether withdrawal of suit with permission to file fresh suit gives fresh cause of action?
vii) When delay can be condoned under Section 5 of the Limitation Act, 1908?
viii) Whether court is bound to dismiss barred suit under section 3 of the Limitation Act, 1908 even limitation has not been set up as defense?
ix) Whether the Court has power to condone the delay in filing the suit?
x) Whether law of limitation is merely a technicality?

Analysis: i) Perusal of Rule 11 of Order VII, Code of Civil Procedure, 1908, divulges that it envisions four categories where the Court could reject a plaint and the first three are where the deficiencies in the plaint could be redressed. For instance, under clause (a) where the plaint is rejected on the ground that it does not disclose a cause of action, subject to law of limitation, a fresh plaint could be presented by overcoming the defect and disclosing the cause of action. Likewise, under clause (b) where the plaint is rejected on failure(s) of plaintiff to correct the valuation, again subject to law of limitation, the defect could be removed and a fresh plaint could be presented. In the same manner, under clause (c) if the plaint is rejected on failure of the plaintiff to supply the requisite stamp paper, subject to law of limitation, such defect could be remedied by supplying the court fees. However, where the plaint under clause (d) of Rule 11 is rejected on the ground that the suit is barred by any law, the filing of fresh plaint is not envisaged unless the findings declaring the suit to be barred by any law are reversed and, therefore, the withdrawal of the suit could not be allowed with the permission to file a fresh. It would, of course, be unlawful to revive a dead cause without bringing back the suit to life.

ii) In the like manner, Order XXIII, Rule 1, C.P.C., which allows the plaintiff to withdraw his suit or abandon part of his claim, empowers the Court to allow such withdrawal with permission to file a fresh suit. However, such permission is to be granted by the Court after satisfying itself and recording reasons that unless such permission is allowed, the suit would fail by reason of some formal defect. The Court can also allow such withdrawal with permission to file a fresh suit in case where the Court is of the view that there are other sufficient grounds for allowing plaintiff to withdraw his suit with the permission to file a fresh suit.

iii) A case law study shows that the suit may be allowed to be withdrawn in a case where the plaintiff fails to implead necessary party or where the suit as framed does not lie or the suit would fail on account of misjoinder of parties or causes of

action or where the material document is not stamped or where prayer for necessary relief has been omitted or where the suit has been erroneously valued and cases of like nature.

iv) It is always to be kept in mind that where such defect could be remedied by allowing amendments, the Court should liberally exercise such powers but within the parameters prescribed by Order VI, Rule 17, C.P.C. Besides while exercising powers under this provision the Court must identify the defect and record its satisfaction that the defect is formal and does not go to the root of the case.

v) It is also to be kept in mind that such withdrawal would not automatically set-aside the judgment and decree which has come against the plaintiff unless such judgment and decree is set-aside by the Court after due application of mind.

vi) If the permission is granted for filing a fresh suit under Order XXIII, Rule 1, C.P.C., then, pursuant to Order XXIII, Rule 2, the plaintiff is bound by the law of limitation in the same manner as if the first suit had not been filed, therefore, no fresh cause of action would accrue from the date when such permission was granted by the Court.

vii) Cases falling in the first category; Section 5 of the Limitation Act, 1908 is applicable which vests the Court with vast discretion of condoning delay in cases where the Court is satisfied that the application seeking condonation of delay discloses "sufficient cause" by accounting for each day of delay occasioned in filing the application, appeal, review or revision.

viii) On the other hand, the Courts on the original side while trying a suit as required under section 3 of the Limitation Act, 1908 are bound to dismiss the suit if it is found to be barred by time notwithstanding that limitation has not been set up as defense. (…) In fact, the language used in Section 3 of the Act ibid is mandatory in nature and imposes a duty upon the Court to dismiss the suit instituted after the expiry of period provided unless the plaintiff seeks exclusion of time by pleading in the plaint one of the grounds provided in Sections 4 to 25 of the Limitation Act. (…) In cases where limitation is not set up in defense and consequently a waiver is pleaded, the Courts notwithstanding such waiver are bound to decide the question of limitation in accordance with law

ix) The Court has no power to condone the delay in filing the suit but could exclude time, the concession whereof is provided in sections 4 to 25 of the Limitation Act, 1908, only in cases where the plaintiff has set up in the plaint one of such grounds available in the Act such as disability, minority, insanity, proceedings bona fide before a Court without jurisdiction etc. and not otherwise.

x) It has been held in number of judgments by Apex Court of the country that the Law of Limitation is not a mere technicality and that once limitation expires, a right accrues in favour of the other side by operation of law which cannot lightly be taken away.

Conclusions: i) Where plaint is rejected under Rule 11 of Order VII clause (a) to (c), a fresh plaint could be presented by overcoming the defects mentioned therein but where the plaint is rejected under clause (d) of Rule 11 on the ground that the suit is

barred by any law, the filing of fresh plaint is not envisaged unless the findings declaring the suit to be barred by any law are reversed.

ii) Order XXIII, Rule 1, C.P.C empowers the Court to allow withdrawal of suit with permission to file a fresh suit, satisfying itself and recording reasons that unless such permission is allowed, the suit would fail by reason of some formal defect. The Court can also allow such withdrawal on other sufficient grounds as well.

iii) See above

iv) Yes, defect in plaint could be remedied by allowing amendments as prescribed by Order VI, Rule 17, C.P.C, however, before exercising such powers, Court must identify the defect and record its satisfaction that the defect is formal and does not go to the root of the case.

v) Withdrawal of suit with permission to file a fresh would not automatically set-aside the judgment and decree which has come against the plaintiff unless the same is set-aside by the Court after due application of mind.

vi) If the permission is granted for filing a fresh suit, then pursuant to Order XXIII, Rule 2, the plaintiff is bound by the law of limitation in the same manner as if the first suit had not been filed, therefore, no fresh cause of action would accrue from the date when such permission was granted by the Court.

vii) Delay under Section 5 of the Limitation Act, 1908 can be condoned where the Court is satisfied that the application seeking condonation of delay discloses "sufficient cause" by accounting for each day of delay occasioned in filing the application, appeal, review or revision.

viii) Courts on the original side while trying a suit as required under section 3 of the Limitation Act, 1908 are bound to dismiss the suit if it is found to be barred by time notwithstanding that limitation has not been set up as defense.

ix) The Court has no power to condone the delay in filing the suit but could exclude time, the concession whereof is provided in sections 4 to 25 of the Limitation Act, 1908.

x) Law of Limitation is not a mere technicality and that once limitation expires, a right accrues in favour of the other side by operation of law which cannot lightly be taken away.

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22. **Lahore High Court**
Muhammad Sarwar alias Babar v. Muhammad Yasin (deceased) through L.Rs. & others
Civil Revision No. 66655 of 2023
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5624.pdf

Facts: The petitioner instituted suit challenging the gift mutation in favour of respondent No.2 and subsequent mutation in favour of respondents No.3 and 4 as well as agreement to sell with the defendant No.5. The respondent No.5 instituted suit for possession through specific performance. The trial Court decreed the suit of the petitioner/plaintiff in terms of impugned judgment and decree whereas the suit for

specific performance etc. filed by the respondent No.5 was decreed as prayed for. The petitioner preferred two appeals against the said consolidated judgment and decree. However, the appellate Court dismissed both the appeals; hence, the instant revision petition.

Issues: i) Which steps are necessary to be performed by the purchaser after cut-off date to show bona fide and readiness to perform his part of agreement?
ii) Whether the concurrent findings, on facts can be disturbed in exercise of revisional jurisdiction?

Analysis: i) Moreover, after cut-off date, the petitioner did not send any written notice to the deceased respondent Muhammad Yasin showing his readiness to pay the remaining amount and asking him to perform his part of the agreement. Furthermore, the suit was filed by him after nine month of the cut-off date but he did not deposit the remaining sale consideration with the Court by moving an application in this regard, which was necessary to show his bona fide and readiness to perform his part of agreement.
ii) Pursuant to above, both the learned Courts have evaluated evidence in true perspective and have reached to a just conclusion, concurrently; as such the concurrent findings, on facts, cannot be disturbed when the same do not suffer from any misreading and non-reading of evidence, howsoever erroneous, in exercise of revisional jurisdiction (…)'There is a difference between the misreading, non-reading and misappreciation of the evidence therefore, the scope of the appellate and revisional jurisdiction must not be confused and care must be taken for interference in revisional jurisdiction only in the cases in which the order passed or a judgment rendered by a subordinate Court is found perverse or suffering from a jurisdictional error or the defect of misreading or non-reading of evidence and conclusion drawn is contrary to law.'(…)'Needless to mention that a revisional Court cannot upset a finding of fact of the Court(s) below unless that finding is the result of misreading, non- reading, or perverse or absurd appraisal of some material evidence. The revisional Court cannot substitute the finding of the Court(s) below with its own merely for the reason that it finds its own finding more plausible than that of the Court(s) below.'

Conclusions: i) After the cut-off date, it is necessary for the purchaser to send written notice to the other party showing his readiness to pay the remaining amount and asking him to perform his part of the agreement and deposit the remaining sale consideration with the Court.
ii) Concurrent findings, on facts, cannot be disturbed when the same do not suffer from any misreading and non-reading of evidence, howsoever erroneous, in exercise of revisional jurisdiction.

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23. **Lahore High Court**
Ghulam Hussain v. Province of Punjab, etc.
Civil Revision No.69554 of 2023
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5645.pdf

Facts: The petitioner instituted a suit for specific performance of agreement to sell along with permanent injunction regarding the suit property against the respondents. One of the respondents instituted a suit for declaration, recovery of compensation and possession against the petitioner and others. Both the suits were consolidated and dismissed by the trial court. Separate appeals against the said consolidated judgment and decree were preferred. The appeal preferred by the petitioner was dismissed, hence, the instant revision petition.

Issues: i) Whether limitation is a mere technicality or the law of limitation requires mandatory application?
ii) If the question of law of limitation is not raised by opposite party to a lis, whether such question may be considered by the Courts at appellate or revisional stage?

Analysis: i) The object of the law of limitation and the law itself, prescribing time constraints for each cause or case or for seeking any relief or remedy, is that if no time constraints and limits are prescribed for pursuing a cause of action and for seeking reliefs/remedies relating to such cause of action, and a person is allowed to sue for the redressal of his grievance within an infinite and unlimited time period, it shall adversely affect the disciplined and structured judicial process and mechanism of the State, which is sine qua non for any State to perform its functions within the parameters of the Constitution and the rule of law. And this shows the Imperative adherence to and the mandatory application of such law by nature and is held to mean and serve as a major deterrent against the factors and the elements which would affect peace, tranquility and due order of the State and society.
ii)The law of limitation requires that a person must approach the Court and take recourse to legal remedies with due diligence, without dilatoriness and negligence and within the time provided by the law; as against choosing his own time for the purpose of bringing forth a legal action at his own whim and desire, which would be the misuse of the judicial process and may also cause exploitation of the legal system and the society as a whole. Therefore, from the mandate of section 3 of the Limitation Act, it is obligatory upon the court to dismiss the cause/lis which is barred by time even though limitation has not been set out as a defence by the other contesting party(s).

Conclusion: i) The limitation is not a technicality or a hyper technicality and once limitation expires, a right accrues in favour of the other side by operation of law which cannot lightly be taken away.

ii) The question of law of limitation, even if not taken or raised by the opposite party, could be considered by the Courts even at appellate and revisional stage.

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24. **Lahore High Court**
The State v. Muhammad Rafique
Capital Sentence Reference No.13-T of 2020
Muhammad Rafique v. The State
Crl. Appeal No.67706-J of 2020
Ms. Justice Aalia Neelum, Mr. Justice Muhammad Waheed Khan
https://sys.lhc.gov.pk/appjudgments/2023LHC5692.pdf

Facts: The appellant has assailed his conviction and sentence recorded by the learned Additional Sessions Judge vide judgment in case FIR registered under section 376 (iii) PPC, whereby the learned trial court convicted the appellant and sentenced to Death, with the direction to pay fine and in case of default thereof, to undergo 06-months S.I further. The appellant was also directed to pay compensation and, in case of its non-payment, to undergo 06-months S.I further. Feeling aggrieved by the judgment of the trial court, the appellant has assailed his conviction by filing the instant jail appeal. The trial court also referred Capital Sentence Reference for confirmation of the death sentence awarded to the appellant.

Issues: i) Whether rape is an offence that is violative of the fundamental right of every person?
ii) Whether the improved defense plea of the accused in the statement u/s 342 Cr.P.C., without supporting evidence can be relied upon?
iii) Whether the evidence of prosecution can be brushed aside on the flimsy plea of the accused?
iv) Whether the accused is entitled to the benefit of the doubt as an extenuating circumstance while deciding his question sentence?

Analysis: i) Rape is an offence that is violative of the fundamental right of every person. Sexual violence, apart from being a dehumanizing act, is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to the victim's honor and offends her self-esteem and dignity, and it degrades and humiliates the victim, where the victim is a helpless, innocent child or a minor. It leaves behind a traumatic experience.
ii) The accused improved its defense plea in the statement u/s 342 Cr.P.C., to the extent, “That offer was flatly refused by me and I about to leave when she attracted me and thrust her finger into the vagina of minor after that victim cried and the blood started oozing.” The accused, to substantiate his plea put the suggestion to the witness, the subscriber of FIR, that mother of infant Zunaira had injured her by inserting her finger in her vagina. The said witness denied the suggestions and negated the defence plea during cross-examination. It is pertinent to note that the accused brought no evidence supporting the improved stand. Resultantly, the testimony of the complainant, and the eyewitness, prevails over

the bald averment of the accused under Section 342 Cr.P.C.
iii) Given the settled legal proposition, the testimony of the complainant, and the eye witness, is sufficient to bring home the guilt of the accused, which, in the instant case, finds corroboration from the medical evidence. As such, the learned trial Court rightly convicted the appellant by holding that the prosecution had succeeded in establishing its case beyond reasonable doubt.
iv) Given the above circumstances, we have concluded that the prosecution has proven its case against the appellant beyond any doubt. However, the factors that have persuaded us not to uphold the capital sentence of the appellant are the negative DNA report and the appellant's age at the time of the incident. As the appellant has been convicted and sentenced to death, the same can be considered a mitigating circumstance in such an eventuality. Based on the grounds discussed hereinabove, we believe that mitigating circumstances exist about the quantum of the appellant's sentence. Therefore, we believe the death sentence awarded to the appellant is quite harsh. The well-recognized principle is that the accused is entitled to the benefit of the doubt as an extenuating circumstance while deciding his question sentence.

Conclusion: i) Rape is an offence that is violative of the fundamental right of every person.
ii) The improved defense plea of the accused in the statement u/s 342 Cr.P.C., without supporting evidence cannot be relied upon.
iii) The evidence of prosecution cannot be brushed aside on the flimsy plea of the accused.
iv) The accused is entitled to the benefit of the doubt as an extenuating circumstance while deciding his question sentence.

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25. **Lahore High Court**
Sheikh Siddique Ahmed v. Chairman Evacuee Trust Property Board, etc.
W.P.No.3344-R of 2023
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2023LHC5679.pdf

Facts: Chairman Evacuee Trust Property Board, Government of Punjab, Lahore decided a reference under sections 8 and 10 of the Evacuee Trust Properties (Management and Disposal) Act, 1975, whereby the Deputy Administrator, Evacuee Trust Property Board was directed to take over the management and control of suit property and to handle it in accordance with the Act ibid. The said order is impugned in instant petition, which is to be decided alongwith connected Writ Petition challenging the proceedings initiated by the Chairman, Evacuee Trust Property Board on the reference filed by one of respondents.

Issues: i) Whether the constitutional jurisdiction can be exercised despite availability of alternate remedy?
ii) What is legal status of an office memorandum?

iii) Whether a reference under Section 10 of the Evacuee Trust Properties (Management and Disposal) Act, 1975 involving intricacy of facts can be decided by Chairman Evacuee Trust Property Board in a summary manner?

Analysis: i) Law holds that constitutional jurisdiction cannot be curtailed or abridged though subservient statutes.
ii) An office memorandum is a special order of the Government released by a proper authority stating the government's policy or decision. Thus, an office memorandum has the force of law.
iii) Section 10 (3) of the Evacuee Trust Properties (Management and Disposal) Act, 1975 guarantees the providing of reasonable opportunity of hearing to the affected person. Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 safeguards such right of the affected ones. Section 21 of the Act ibid bestows power of a civil court upon the Federal Government or any person authorized by it, the Chairman Evacuee Trust Property Board and every Officer appointed under the Act ibid for the purposes of making any inquiry or hearing in appeal or revision under the Act ibid for the matters mentioned therein.

Conclusion: i) The constitutional jurisdiction can be exercised despite availability of alternate remedy if the proceedings or order is patently illegal or perverse as well as where the alternate remedy is not efficacious or adequate.
ii) An office memorandum is recognized as an order from the government or a circular released by the executive branch having the force of law.
iii) If the reference under Section 10 of the Evacuee Trust Properties (Management and Disposal) Act, 1975 before the Chairman Evacuee Trust Property Board involves intricacy of facts, it cannot be decided in a summary and slipshod manner.

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26. **Lahore High Court**
Province of Punjab through Collector, District Sialkot etc v. Mst. Sughran Bibi (deceased) etc.
C.R.No.115655/2017
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2023LHC5726.pdf

Facts: Through this civil revision the petitioners have challenged the validity of the judgment & decree passed by the learned Civil Judge who decreed the suit for declaration with possession and mandatory injunction filed by the respondents and also assailed the judgment & decree passed by the learned Additional District Judge who dismissed the appeal of the petitioners.

Issues: i) Whether it is mandatory requirement of law that documents relied upon should be produced in the evidence by party in its own statement?
ii) Whether in the absence of a necessary party, effective decree or order can be passed?
iii) Whether treatment of evacuee property could only be assailed through

proceedings before the Custodian of Evacuee Property?
iv)Whether High Court has jurisdiction to interfere in the perverse concurrent judgments & decrees of the lower fora?
v) Whether it is inalienable obligation of the courts to be very careful and cautious and assure itself to the extent of certainty that no foul is being played with the state assets.

Analysis: i) It is mandatory requirement of law that documents relied upon should be produced in the evidence by party in its own statement so that the adverse party may have a fair opportunity to cross-examine the same, as such the documents produced by the counsel lack intrinsic value and such documents can validly be excluded from consideration...
ii) In the absence of a necessary party, no effective decree or order can be passed and even if passed that would have no binding force qua the party who was not party to the lis...
iii) It is settled law that where a property, rightly or wrongly, treated to be an evacuee property, such treatment of property could only be assailed through proceedings before the Custodian of Evacuee Property...
iv) High Court, under Section 115 C.P.C, has jurisdiction to interfere in the perverse concurrent judgments & decrees of the lower fora.
v) It is inalienable obligation of the courts to be very careful and cautious and assure itself to the extent of certainty that no foul is being played with the state assets. An extraordinary obligation is placed upon the courts to keep abreast itself with law and facts of the case and when certain material facts unearthed before it then the matter should be decided as per law even without being influenced by respective pleadings of the parties…

Conclusion: i) Yes, it is mandatory requirement of law that documents relied upon should be produced in the evidence by party in its own statement.
ii) Yes, in the absence of a necessary party, effective decree or order cannot be passed.
iii) Yes, treatment of evacuee property could only be assailed through proceedings before the Custodian of Evacuee Property.
iv) Yes, High Court has jurisdiction under Section 115 C.P.C to interfere in the perverse concurrent judgments & decrees of the lower fora.
v) Yes, it is inalienable obligation of the courts to be very careful and cautious and assure itself to the extent of certainty that no foul is being played with the state assets.

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27. **Lahore High Court**
Gulzar Ahmad (deceased) through his legal heirs v. Rab Nawaz etc.
Civil Revision No.60420 of 2021
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2023LHC5745.pdf

Facts: Through these civil revisions, the petitioners have challenged the validity of the judgment & decree passed by the Civil Judge who decreed the suit for declaration filed by the respondents No.1 to 6 and also assailed the judgment & decree passed by the learned Additional District Judge who dismissed the appeal of the petitioners.

Issues: i) Whether principles of Quran and Sunnah are admitted as supreme law of Pakistan?
ii) Whether principles of Quran and Sunnah are mandatorily and manifestly applicable upon Muslims?
iii) Whether limitation runs against the inheritance matters as well as against any patently void order entry?

Analysis: i) Even as per Article 227 of the Constitution of the Islamic Republic of Pakistan, 1973, the principles of Quran and Sunnah are admitted as supreme law of this country and all provisions, rules, regulations are to be legislated and framed within the precincts of Islamic principles.
ii) As the predecessor-in-interest of the parties of the lis as well as the parties themselves are Muslims and principles of Quran and Sunnah are mandatorily and manifestly applicable upon them as well. The shares of each and every Muslim inheritor have conclusively been prescribed in Holy Quran. Allah Almighty has ordained the Muslims to decide their disputes as per the principles of the Holy Quran… The rights or shares of each and every Muslim heirs in the estate of his/her deceased propositus is absolutely, conclusively and finally described/determined in the Holy Quran, which shares are definite in nature. In this regard, it is expedient to take guidance from the Holy Quran, particularly from Surah tul Nisa Ayat Nos.7 to 11 (English translation whereof by Marmaduke Pickthall and Urdu translation by Molana Fateh Muhammad Jalandari)…
iii) As regard the objection of the petitioners/defendants that the suit is time barred. Admittedly, the moment deceased closed his eyes, all his legal heirs according to the principles of Quran and Shariah became absolute owner to the extent of their respective shares in estate of the deceased and without resorting to the legal course of independent transaction, the said ownership cannot be taken away by means of any unauthorized entry in the revenue record and if any entry is made in clandestine manner with collusiveness of the revenue staff, such entry is devoid of any legality and creating any valid right. The main object of registration and sanctioning of mutation of inheritance is mere formality to update the official record whereas all legal heirs of a deceased become absolute owners of the property to the extent of their respective share until and unless they themselves voluntarily and legally further alienate their said share/right and the said legal heirs by operation of law become joint owners in the estate having constructive possession over their share and no limitation runs against the inheritance matters as well as against any patently void order entry.

Conclusion: i) As per Article 227 of the Constitution of the Islamic Republic of Pakistan,

1973, the principles of Quran and Sunnah are admitted as supreme law of Pakistan.
ii) The principles of Quran and Sunnah are mandatorily and manifestly applicable upon Muslims.
iii) No limitation runs against the inheritance matters as well as against any patently void order entry.

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28. **Lahore High Court**
Muhammad Tariq v. The Government of the Punjab through Secretary Finance, Lahore & others
Writ Petition No.174 of 2022/BWP
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC5763.pdf

Facts: The petitioner assailed *vires* of correspondence issued by respondents No.3 & 1, whereby deficiency in qualifying service of petitioner was not condoned and petitioner was disentitled for grant of pension.

Issues: i) Whether a civil servant who is compulsorily retired is entitled to grant of pension by extending benefit of Rule 2.12(2)(a) of the Pension Rules to achieve the threshold of twenty years provided under section 12 of the Punjab Civil Servants Act, 1974?
ii) Whether compulsory retirement differs from dismissal or removal from service?
iii) Whether administrative officials are vested with any constitutional or legal authority to interpret, extend, curtail, modify, add or subtract a provision of law?

Analysis: i) It is pertinent to mention here that under Rule 3.1 of the Pension Rules, pensions are classified into four categories catering for different situations and circumstances The said classes are as under: (a) Compensation Pension (b) Invalid Pension (c) Superannuation Pension (d) Retiring Pension. The case of petitioner falls in the category (d) i.e. Retiring Pension, which is dealt with under Rule 3.5… The [said] Rule does not prescribe any minimum or maximum length of service for grant of retiring pension. Furthermore, Rule 2.12(2)(a) of the Pension Rules provides that a deficiency of 06-months or less in qualifying service of a government servant shall be deemed to have been condoned… In this view of the matter, petitioner reaches the threshold of twenty years of qualifying service for pension or other retiring benefits within the contemplation of Section 12 of the Punjab Civil Servants Act, 1974.
ii) Needless to say that compulsory retirement differs from dismissal or removal from service as it does not stipulate penal consequences inasmuch as a person retired compulsorily is entitled to pension and other retiral benefits proportionate to the period of service standing to his credit.
iii) It is well-established that the administrative officials are not vested with any constitutional or legal authority to interpret, extend, curtail, modify, add or subtract a provision of law. Interpretation of law is purely and exclusively a

judicial function under the scheme of trichotomy of power enshrined in the Constitution of the Islamic Republic of Pakistan, 1973 ("the Constitution") and jurisprudentially entrenched in our legal system through consistent and exhaustive pronouncements of the Apex Court in this regard.

Conclusion: i) A civil servant who is compulsorily retired is entitled to grant of pension if his length of service becomes 20 years (provided in section 12 of the Civil Servants Act, 1974) after awarding benefit of 06-months or less given under Rule 2.12(2)(a) of the Pension Rules.
ii) Compulsory retirement differs from dismissal or removal from service as it does not stipulate penal consequences.
iii) The administrative officials are not vested with any constitutional or legal authority to interpret, extend, curtail, modify, add or subtract a provision of law.

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29. **Lahore High Court**
Ijaz Hussain alias Jajay Shah v. The State and another
Criminal Appeal No.214/2021
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC5785.pdf

Facts: The appellant filed appeal against the judgment passed by the trial court in case FIR for an offence under section 9(c) of the Control of Narcotic Substances Act, 1997 whereby he was convicted under section 9(c) of the Act and sentenced to rigorous imprisonment for four years and six months with a fine of Rs.20,000/-.

Issue: What is the primary objective of drawing the recovery memorandum on the spot, with the signatures of witnesses?

Analysis: A recovery memorandum is the fundamental document in cases involving narcotics. This document must be executed in the presence of two or more credible witnesses, who are then required to endorse it with their signatures. The primary objective of drawing the recovery memorandum on the spot, with the signatures of such witnesses, is to ensure that the recovery process is carried out transparently and with integrity, reducing the possibility of false allegations or evidence tampering. Once the recovery memorandum is prepared, the next step for the prosecution is to produce the same before the trial court, to prove the recovery of the material and the memo's preparation through the scribe and the marginal witnesses.

Conclusion: The primary objective of drawing the recovery memorandum on the spot, with the signatures of witnesses, is to ensure that the recovery process is carried out transparently and with integrity, reducing the possibility of false allegations or evidence tampering.

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30. **Lahore High Court**
Abdul Sattar v. The State and another
Crl. Misc. No.2439/B/2023
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2023LHC5667.pdf

Facts: According to the prosecution, four girls while studying at Government Sadiq College, stayed at the Petitioner's private hostel. The water tank of which on the roof was constantly leaking and due to which building was damaged and roof caved in, killing two of the girls and injuring two others. The Complainant, the father of one of the deceased girls, lodged FIR under section 302 of the PPC. During the investigation, the police substituted section 302 PPC with section 322 PPC. The Petitioner seeks pre-arrest bail in that case through this application.

Issues: i) Whether mens rea is condition precedent to attract the provisions of section 321 PPC?
ii) What is definition of word "unlawful act"?
iii) When omission to perform a particular act becomes an offence?
iv) What is the "but for" test?
v) What are the requirements to prove the charge of provisions of Section 321 PPC?
vi) Whether an accused is entitled to bail straightaway as of right in a case under section 322 PPC?
vii) Whether accused of bailable offence can be arrested?
viii) Whether accused is entitled to bail in hurt cases being punishable only with Arsh or Daman or is there any exception to it?
ix) Whether the considerations for granting pre-arrest and post-arrest bail are different?
x) Whether bail can be granted in offences not falling within the prohibitory clause as a rule and refusal is an exception?
xi) Whether the offence under section 322 PPC falls within the prohibitory clause?

Analysis: i) Analysis of section 321 PPC would show that this provision applies when a person (a) commits an unlawful act, (b) without any intention to cause the death of, or cause harm to any person, and (c) the said act becomes a cause for the death of another person. Clearly, mens rea is not the condition precedent to attract this section. The legislature has made actus reus culpable.
ii) The Pakistan Penal Code does not define "unlawful act", so we must have recourse to the dictionary meaning. According to Black's Law Dictionary, it connotes "conduct that is not authorized by law; a violation of a civil or criminal law".
iii) Albeit an infraction might be committed by omission, this does not imply that everyone is under a duty to act. The courts have identified several categories in which a duty to act arises. There may be some overlap, but we can classify

recognized duties according to their recognized sources as follows: (a) duties arising from statute (i.e. where it expressly states that failure to perform a particular duty imposed by it constitutes an offence), (b) duties arising from contract, (c) duties based on a relationship, (d) duties arising from the assumption of responsibility, and (e) duties arising where accused has created a danger.

iv) In other words, it must demonstrate that the incident would not have happened but for the accused's actions. (This is also known as the "but for" test).

v) Section 321 PPC must be interpreted according to the principles discussed above. It makes a person legally accountable not only for engaging in an illegal act that results in the death of another person but also for failing to take measures within his power to prevent such an event from happening if he owes a duty of care. In order to succeed, the prosecution must establish a causal relationship between the accused's conduct (or omission) and the incident resulting in a person's death. In other words, it must demonstrate that the incident would not have happened but for the accused's actions. (This is also known as the "but for" test). Second, the prosecution must establish legal causation, which is closely connected to the notions of responsibility and culpability.

vi) The principle that emerges from the above discussion is that the offence of Qatl-bis-sabab being non-bailable, an accused cannot seek bail as of right. The court has to decide every bail application judiciously considering its facts, the nature of allegations and the evidence available on record, and the principles regulating refusal or grant of pre- and post-arrest bail.

vii) The Full Bench stated that even if the offence is bailable, an accused person can be arrested during the investigation phase, but he is entitled to be admitted to bail as of right. It held that the arrest of an accused person for investigation cannot be equated with the punishment of a prison sentence, which may be imposed on him upon his conviction after the trial.

viii) when considering a post-arrest bail, the court should treat hurt cases punishable only by Arsh or Daman differently from those cases where the offence attracts the optional additional sentence of imprisonment as Ta'zir because the accused "is a previous convict, habitual or hardened, desperate or dangerous criminal or the offence has been committed by him in the name or on the pretext of honour" as mentioned in subsection (2) of section 337-N PPC. The court may legitimately refuse bail to an accused person falling in the second category, taking into account the specific circumstances of the case.

ix) The considerations for granting pre-arrest and post-arrest bail are different.

x) Regarding post-arrest bail, section 497 Cr.P.C. outlines the circumstances when a court may admit an accused to bail in cases involving non-bailable offences. Furthermore, in Tariq Bashir and others v. The State (PLD 1995 SC 34) and a chain of subsequent decisions, the Supreme Court has ruled that where an offence does not fall under the prohibitory clause, accepting bail is a rule and the rejection is an exception.

xi) The offence under section 322 PPC does not fall within the prohibitory clause since its maximum punishment is Diyat.

Conclusions: i) Mens rea is not the condition precedent to attract provisions of section 321 PPC, however, the legislature has made actus reus culpable.
ii) The word "unlawful act", has not been defined in PPC. According to Black's Law Dictionary, it connotes "conduct that is not authorized by law; a violation of a civil or criminal law".
iii) The categories in which a duty to act arises are: (a) duties arising from statute (b) duties arising from contract, (c) duties based on a relationship, (d) duties arising from the assumption of responsibility, and (e) duties arising where accused has created a danger.
iv) "but for" test demonstrate that the incident would not have happened but for the accused's actions.
v) In order to prove charge under section 321 PPC the prosecution must establish a causal relationship between the accused's conduct (or omission) and the incident resulting in a person's death. Second, the prosecution must establish legal causation, which is closely connected to the notions of responsibility and culpability.
vi) Offence of Qatl-bis-sabab u/s 321 PPC being non-bailable, an accused cannot seek bail as of right.
vii) An accused person can be arrested during the investigation phase in bailable offence, but he is entitled to be admitted to bail as of right.
viii) When considering a post-arrest bail, the court should treat hurt cases punishable only by Arsh or Daman, however the court may refuse bail to an accused person falling under subsection (2) of section 337-N PPC.
ix) The considerations for granting pre-arrest and post-arrest bail are different.
x) When an offence does not fall under the prohibitory clause, accepting bail is a rule and the rejection is an exception.
xi) The offence under section 322 PPC does not fall within the prohibitory clause since its maximum punishment is Diyat.

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31. **Lahore High Court,**
Rizwan Ali Sayal v. Federation of Pakistan and others
Writ Petition No. 1938 of 2023
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5476.pdf

Facts: Through this Constitutional petition, the Petitioner seeks a writ of *quo warranto* under Article 199(1)(b)(ii) of the Constitution of Islamic Republic of Pakistan thereby challenging the appointment of one of the Respondents as Member Judicial, Appellate Tribunal Inland Revenue.

Issues: i) Whether an acquittal on basis of a compromise would be honorable one, if so, what would be consequent impact thereof?

ii) Whether Section 130(3) of the Income Tax Ordinance, 2001 provides any condition relating to character verification for appointment of a Judicial Member of Income Tax Appellate Tribunal?

iii) Whether a writ of *"quo warranto"* should be allowed in case where a candidate's unchallenged qualifications were thoroughly examined at time of his appointment?

iv) Whether the office of Member Judicial, Appellate Tribunal Inland Revenue is a public office?

Analysis: i) Once a person is acquitted by trial court, said person would stand shorn of stigma of any allegation and he would be deemed as innocent as that he had not committed any crime. Order of acquittal of an accused shall erase, efface, obliterate and wash away his alleged or even already adjudged guilt in the matter.

ii) For appointment as Judicial Member of Income Tax Appellate Tribunal, two categories of persons have been provided under Section 130(3) of the Income Tax Ordinance, 2001, one who has exercised powers of District Judge and the other who has been an Advocate of High Court, and both categories of persons are required to fulfill only one common qualification i.e. they should be qualified to be a Judge of the High Court.

iii) Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 reveals that, for the purpose of maintaining a writ of *quo warranto,* the petitioner must satisfy the court, inter alia, that the office in question is a public office and is held by a usurper without legal authority. A Member Judicial Appellate Tribunal Inland Revenue would be lawfully occupying the public office if he is appointed after fulfilling all codal formalities and keeping in view Section 130(3) of the Income Tax Ordinance, 2001 prescribing eligibility criteria of a candidate.

iv) The term Public Office has not been defined under Article 260 of the Constitution of Islamic Republic of Pakistan, 1973, but generally it refers to any person working in the Public Sector, whether in Parliamentary, Government or Municipal Institutions. Usually, the offices created under the Constitution or specific statutes are deemed to be public offices. A Member Judicial of Appellate Tribunal Inland Revenue is appointed u/s 130(3) of the Income Tax Ordinance, 2001 read with the Appointment of Income Tax Appellate Tribunal Member's Rules, 1998. The office of Member Judicial, Appellate Tribunal Inland Revenue is created by the State and the statute. Moreover, the duties attached to said office are of public nature.

Conclusion: i) All the acquittals including acquittal on basis of compromise are honorable for the reason that the prosecution does not prove such cases against the accused on the strength of evidence and an acquittal in outcome of compromise must entail upon all consequences of pure acquittal.

ii) Section 130 (3) of the Income Tax Ordinance, 2001 does not provide any conditions relating to character verification for appointment of a Judicial Member of Income Tax Appellate Tribunal.

iii) A writ of *"quo warranto"* should not be allowed when a candidate's unchallenged qualifications were thoroughly examined at the time of his appointment.
iv) The office of Member Judicial Appellate Tribunal Inland Revenue by all intents and purpose is a public office.

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32. **Lahore High Court**
Khushdil Khan Malik v. Federation of Pakistan and others
W.P. No. 3542/2022
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5792.pdf

Facts: The Petitioner filed petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 seeking a direction to Respondents No.1 to 3 to consider the recommendations/citations of the Petitioner as made by the Respondent No.5, for conferment of Civil Award of "Sitara-i-Imtiaz" upon the Petitioner by the President of Pakistan.

Issue: Whether mere recommendation of the name of a person for Civil Award, creates any fundamental right, in favour of the said person for conferment of such award?

Analysis: If Article 259(2) of the *"Constitution"* and provisions of Section 3 of the [Decorations Act, 1975] are put in juxta-position, it would be clarified that the President can only award the title, honour or decoration on any citizen in recognition of gallantry (awards in relation to *Shuja'at*), academic distinction (awards in the order of *Imtiaz*), sports, nursing, human rights and public service (awards in the order of *Imtiaz*) and the power to withdraw, forfeit or annul a title or decoration also vests with the President on whose personal approval, the title or decoration shall be restored if once withdrawn, forfeited or annulled. There is a complete mechanism for conferment of the Awards and after adopting all the procedural steps, the matter has been referred by the Committee to the President for conferment of the Award, therefore, the contention raised by the Petitioner that the Committee has no authority to confer the Award on any citizen of Pakistan has no force. Merely nominating name of the Petitioner by his parent Department to the relevant Division, does not create any legal/vested or fundamental right in his favour.

Conclusion: Mere recommendation of the name of a person for Civil Award, does not create any fundamental right, in favour of the said person for conferment of such award.

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33. **Lahore High Court**
M/s Nordex Singapore Equipment Limited v. Federal Board of Revenue, CIR and FFC Energy Ltd.
Writ Petition No.420 of 2014
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC5802.pdf

Facts: Through this writ petition under article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner is seeking direction to the respondents to declare that being non-resident Company, it is not liable to tax deduction under Section 152 Ordinance, 2001; that a direction be issued to the Respondent No.3 to make payment to the petitioner without deduction of tax; that the petitioner is seeking exemption from deduction of tax in terms of Section 152(7)(a) of the Ordinance, 2001.

Issues: i) What is status of a non-speaking order?
ii) Whether availability of alternative remedy bars the jurisdiction of High Court to entertain writ petition and grant relief to the aggrieved party?

Analysis: i) It also reveals from the impugned order that the Respondent No.2 has neither considered the version of the "Petitioner" nor provided any solid grounds or mentioned the relevant provision of law, thus, passed a non-speaking order which is not sustainable in the eye of law i.e. Sections 206-A and 152 of the "Ordinance"… Similarly, the Courts in various judgments, has directed several authorities to adhere to the above-mentioned principle while passing a speaking order with reasons and after keeping in view the facts and circumstances of the case, applicable law as well as precedents, if available.
ii) It has been held in the case of "The Murree Brewery Co. Ltd. versus Pakistan through the Secretary to Government of Pakistan Works Division" (PLD 1972 SC 279) that "the rule that the High Court will not entertain a writ petition when other appropriate remedy is yet available, is not a rule of barring jurisdiction, but a rule by which the Court regulates its jurisdiction. One of the well-recognized exceptions to the general rule is a case where an order is attacked on the ground that it was wholly without authority. Where a statutory functionary acts mala fide or in a partial, unjust and oppressive manner, the High Court, in the exercise of its writ jurisdiction, has power to grant relief to the aggrieved party".

Conclusion: i) A non-speaking order is not sustainable in the eye of law.
ii) Availability of alternative remedy does not bar the jurisdiction of High Court to entertain writ petition and grant relief to the aggrieved party but this general rule regulates the jurisdiction of High Court.

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34. **Lahore High Court**
Muhammad Javed Shafi, etc. v. National Bank of Pakistan
RFA No. 30994 of 2022
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC5775.pdf

Facts: This Regular First Appeal, under section 22 of the Financial Institutions (Recovery of Finances) Ordinance 2001, is directed against the judgment and decree, whereby learned Single Judge in chambers, exercising jurisdiction under the Ordinance, 2001, decreed the claim of respondent Financial Institution against the appellants, jointly and severally, alongwith costs of funds in terms of Section

3 of the Ordinance, 2001 and costs of the suit.

Issues: i) What is the effect of not appending current account statement with application for leave to defend?
ii) Whether filing of suit by customer and grant of unconditional leave to defend to Financial Institution would entitle appellants/customers for grant of leave to defend in suit by Financial Institution as a rule of thumb?

Analysis: i) …Failure to append current account statement with application for leave to defend raises presumption of withholding of material information, discrediting claim for grant of unconditional leave to defend.
ii) …Mere institution of suit by the customer, seeking various declarations, and grant of unconditional leave to defend to the Financial Institution would not *per se* entitle appellants for grant of leave to defend in suit by Financial Institution, as rule of the thumb.

Conclusion: i) It raises presumption of withholding of material information, discrediting claim for grant of unconditional leave to defend.
ii) No it would not *per se* entitle appellants/customers for grant of leave to defend in suit by Financial Institution, as rule of the thumb.

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35. **Lahore High Court**
Muhammad Aslam v. The State etc.
Criminal Revision No.255 of 2023
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2023LHC5661.pdf

Facts: The petitioner through revision petition has questioned the order passed by the learned Additional Sessions Judge, whereby application filed by the petitioner for recalling of order requiring the accused to submit surety bond under section 91 of Cr.P.C for his future appearance in the court was dismissed.

Issues: i) Whether applicability of section 91 of the Code is limited to trial in private complaints only or it is applicable to State cases as well?
ii) Whether it is necessary to grant bail to an accused before requiring or after taking the surety bond for appearance from him under section 91 of the Cr.P.C?
iii) Whether the court can require accused to execute a bond with or without sureties for his future appearance upon summoning under section 204 of the Code?
iv)What is the purpose of issuance of warrant, bailable or non-bailable?
v) Whether the Court can commit the accused to custody for the purpose of trial?
vi) What options are available to the Court, when an accused is summoned to face the trial?
vii) Under what law, the detention of accused under section 351 of Cr.P.C is regulated and whether post arrest bail of such accused u/s 497 of Cr.P.C can be entertained?

Analysis: i) After taking cognizance of an offence by the Court through any of three modes as mentioned in section 190, followed by commencement of proceedings under section 204, it has power to take bond from the accused under section 91 of the Code, in order to secure his presence during the trial.

ii) It is not necessary that an accused of non-bailable offence must be granted bail before asking him to execute bond with or without sureties under section 91 of the Code because provisions of section 91 and 497 of the Code are meant for different situations (…) When a bond is taken under section 91 of the Code, question of bail does not arise because "bail is only for continued appearance of a person and not to prevent him from committing certain acts"

iii) On summoning under section 204 of the Code, accused can apply for his pre-arrest bail which may or may not be granted depending upon the circumstances of the case but even in such a case upon appearance of the accused before the Court, the Court in its discretion can require him to execute a bond with or without sureties for his future appearance.

iv) Issuance of warrant, bailable or non-bailable is meant only to procure attendance of an accused person before the Court and not for any other purpose.

v) It is misconception that the Court in every case in an omnibus manner shall direct the offender to execute a bond on his appearance before the Court to face the trial. The word "may" used in section 91 of the Code is when read in the light of section 351 of the Code, makes it clear that if the Court deems appropriate can commit the accused to custody for the purpose of trial (…) even if accused is not under arrest or upon a summons, the Court is still authorized to detain him if he is present before the Court and against whom evidence is available of committing an offence.

vi) When an accused is summoned to face the trial, the Court has two options, either to ask him to execute bond with or without sureties under section 91 of the Code for his continued appearance before the Court during the trial or commit him to custody as per section 351 of the Code if the evidence is available that he has committed the offence.

vii) His such detention shall then be regulated under section 344 of the Code in order to remand him to custody from time to time and at an appropriate stage his request for bail u/s 497 of the Code can be entertained.

Conclusions: i) Section 91 of Cr.P.C is not limited to trial in private complaints only as it is also applicable to State cases as well**.**

ii) It is not necessary to grant bail to an accused before asking him to execute bond or after taking the said sureties under section 91 of the Cr.P.C.

iii) Yes, upon summoning under section 204 of Cr.P.C, the Court in its discretion can require accused on his appearance to execute a bond with or without sureties for his future appearance.

iv) Issuance of warrant, bailable or non-bailable, is meant only to procure attendance of an accused person before the Court.

v) Yes, the Court is authorized to detain the accused if he is present before the Court and against whom evidence is available of committing an offence.
vi) When an accused is summoned to face the trial, the Court has two options, either to ask him to execute bond under section 91 of the Code or commit him to custody as per section 351 of the Code.
vii) The detention of the accused under section 351 of Cr.Pc is regulated under section 344 of the Code and his request for bail u/s 497 of the Code can be entertained at an appropriate stage.

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36. **Lahore High Court**
Muhammad Irfan v. Addl. District Judge, etc.
Writ Petition No.50434 of 2023
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC5703.pdf

Facts: Through this writ petition the petitioner has assailed the order of Appellate Court, whereby, after admitting the appeal, the parties are directed to maintain the status quo, however, the petitioner was also directed to deposit arrears of rent, and monthly rent during pendency of the appeal.

Issues: i) Whether in an appeal, emanating from the eviction proceedings, wherein the respondent has denied the relationship of landlord and tenant, the Appellate Court while admitting the said appeal can pass an order directing the appellant to deposit the arears of rent adjudicated by the Rent Tribunal, along with regular deposit of monthly rent, till the pendency of the appeal?
ii) Whether Rent Tribunal is empowered to refuse the leave and straightaway allow the eviction application and simultaneously pass an order to pay rent due from the tenant?
iii) In what circumstances the Appellate Court can pass an order directing appellant before it to deposit the arrears of rent, as also the monthly rent, during the pendency of appeal?
iv)Whether power of the Appellate Court can be considered co-extensive with that of the Rent Controller?

Analysis: i) Section 24 of the Punjab Rented Premises Act, 2009 deals with the deposit of rent, during the pendency of the ejectment petition, before the Rent Tribunal. When an eviction petition is filed and the respondent therein appears and files leave to appear and contest the case, Section 24 comes into play and the Rent Tribunal is empowered to pass an order directing the tenant to deposit the monthly rent due…If the relationship has been denied by the respondent as sub-Section (2) of Section 24 of the Act lays down that if there is dispute as to the amount of rent due, then the Rent Tribunal shall tentatively determine the dispute and pass the order for the deposit of rent and since the term "rent due" has a wide sweep and would include a dispute of the nature where the tenancy relationship is denied, therefore, any other construction would not only nullify the intention of

the legislature but also would give a lever in the hands of the tenants to avoid the payment of rent…Examining the matter from yet another angle, this Court is of the opinion that the Appellate Court while issuing notice and admitting the appeal should not pass an order directing the appellant (purported tenant) to deposit the arears of rent determined by the Rent Tribunal, along with monthly rent till pendency of the appeal as the same would lead to a self-defeating inference drawn by the Appellate Court inasmuch as on the one hand, the Appellate Court considers the case of the appellant to prima facie have some force and on the other hand, simultaneously burdening the appellant with deposit of arrears of rent and/or monthly rent in cases where the tenancy relationship is denied. Such contradictory and self-defeating inference is certainly not envisaged under sub-Section (6) of Section 28 of the Act read with Section 24 thereof. At this juncture, it is pertinent to observe that the legislature in its wisdom has provided for decision of an appeal, preferred under the Act, within prescribed period of 60-days in terms of sub-Section (7) of Section 28 thereof. In cases where the tenancy relationship is denied, significance of such time bound provision of the law gets accentuated, which is necessarily required to be strictly adhered by the Appellate Court, in order to ensure that rights of the landlord and/or the tenant do not hang in an uncertainty, for too long.

ii) In cases where the denial of tenancy relationship is frivolous and shallow, the Rent Tribunal, is empowered to refuse the leave and straightaway allow the eviction application and whilst so doing, the Rent Tribunal can simultaneously pass an order under Section 24 of the Act finally determining the rent due from the tenant and direct that the same be deposited/paid…Needless to mention that the Appellate Court, in terms of sub-Section (4) of Section 28, can always dismiss the appeal in limine if after examining the final order passed by the Rent Tribunal and the record, if any, appended with the appeal, it reaches the conclusion that the denial of tenancy relationship was contumacious and the Rent Tribunal has rendered a just decision, which does not require any further probe and the issuance of notice to the ejectment petitioner is not necessary.

iii) Once the Rent Tribunal has held a respondent of the eviction petition to be a tenant, there is a judicial verdict against the said respondent and therefore, the Appellate Court can pass an order directing such respondent (appellant before it) to deposit the arrears of rent, as also the monthly rent, during the pendency of appeal, as directed through the impugned order. Section 28 of the Act deals with the appeals and in terms of its sub-Section (6), the powers of the Rent Tribunal are available to the Appellate Court...

iv) The Appellate Court is vested with all the powers that can be exercised by the lower forum as appeal is continuation of the lis. This principle also applies to such powers which the Trial Court cannot exercise under the law, in terms of passing an interim order like the one under Section 24 of the Act, directing the respondent to deposit the rent due. If the Rent Tribunal is not vested with the power under Section 24 to direct deposit of the interim/tentative rent in case where the tenancy relationship is denied, then in terms of sub-Section (6) of Section 28 of the Act,

while hearing the appeal, the same principle applies to the Appellate Court where the said respondent after losing before the Rent Tribunal, prefers an appeal against the final order of eviction that includes the rent payable as determined by the Rent Tribunal…Sub-Section (6) of Section 28 by reference makes Section 24 of the Act applicable to the appeals, which has been predominantly interpreted in various cases that the Rent Tribunal has no power to pass the order to deposit tentative rent if the tenancy relationship is denied. The power of the Appellate Court in such matter co-exists with that of the Rent Tribunal as noted hereinabove.

Conclusion: i) In an appeal, emanating from the eviction proceedings, wherein the respondent has denied the relationship of landlord and tenant, the Appellate Court while admitting the said appeal should not pass an order directing the appellant to deposit the arears of rent adjudicated by the Rent Tribunal, along with regular deposit of monthly rent, till the pendency of the appeal.
ii) Yes, Rent Tribunal, is empowered to refuse the leave and straightaway allow the eviction application and simultaneously pass an order to pay rent due from the tenant in cases where the denial of tenancy relationship is frivolous and shallow.
iii) In circumstances where once the Rent Tribunal has held a respondent of the eviction petition to be a tenant and there is a judicial verdict against the said respondent, the Appellate Court can pass an order directing appellant before it to deposit the arrears of rent, as also the monthly rent, during the pendency of appeal.
iv) Yes, power of the Appellate Court can be considered co-extensive with that of the Rent Controller.

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37. **Lahore High Court**
Ali Mansoor v. Area Judicial Magistrate, etc.
WP No. 58171 of 2023
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2023LHC5767.pdf

Facts: Through this constitutional petition, the petitioner has challenged the vires of the impugned order passed by Judicial Magistrate 1st Class, whereby the cancellation report prepared under Section 173 of the Criminal Procedure Code, 1898 for offence under Section 489-F of the Pakistan Penal Code, 1860, was agreed with.

Issues: i) What is the rationale behind rule 24.7 of the Punjab Police Rules, 1934 qua cancellation of criminal cases?
ii) Whether finding of magistrate, that there is no mandatory requirement to hear complainant before passing an order on cancellation report, is legal in terms of maxim *Audi Alteram Partem*?
iii) Whether the rule of justice embodied in the maxim *audi alteram partem* is only confined to judicial proceedings?
iv) Whether the principle "justice should not only be done but should manifestly and undoubtedly be seen to be done" is applicable to administrative

adjudications?

v) Whether the principle of *audi alteram partem* is read in every statute as its integral part even if not explicitly provided therein and how violation of this principle is considered?

vi) Whether it is mandatory for the investigating officer to inform the complainant through ordinary or modern ways of communication, about the conclusion/result of the investigation of cancellation report?

vii) What is the effect of not taking thumb impression of complainant on cancellation report?

viii) What guidelines should be followed by the investigating agency, concerned prosecutors and Magistrates regarding the preparation, forwarding and dealing with a cancellation report in connection with a criminal case?

Analysis: i) …The rationale behind this Rule is that a cancellation report in a criminal case should be filed through a senior supervisory officer to preclude the possibility of malpractice and arbitrariness on the part of the investigating officer. This precautionary measure has been provided in the Rules to ensure fairness and impartiality in the investigation process because if a cancellation report of a criminal case is agreed with by the concerned Magistrate, it amounts to the termination of that criminal case. It is incumbent upon the Superintendent of Police to forward the cancellation report after applying his independent mind, otherwise, the very purpose of Rule 24.7 of the Rules shall be defeated.

ii) … No doubt that while agreeing with a cancellation report Magistrate acts on the administrative side but I am afraid that such findings by the Magistrate are against the dictates of law and violative of the principle of natural justice *'audi alteram partem'*…The maxim *Audi Alteram Partem* is derived from the Latin phrase "*audi atur et altera pars*" which means that every party shall be heard.

iii) The maxim *audi alteram partem* is applicable to judicial, quasi-judicial and administrative proceedings…The rule of justice embodied in the maxim *audi alteram partem* is not confined to judicial proceedings but extends to quasi-judicial and administrative proceedings, too.

iv) It is now beyond doubt that all the tribunals and administrative authorities while exercising quasi-judicial or administrative powers are also under an obligation to opt the above canons of judicial conduct…that "justice should not only be done but should manifestly and undoubtedly be seen to be done" is realized largely in its application to administrative adjudication.

v) The principle of *audi alteram partem* is read in every statute as its integral part even if not explicitly provided therein...The violation of this principle vitiates the proceedings and makes the action taken therein to be illegal, as the violation of this principle is considered as a violation of law.

vi) …A bare reading of the above-stated Rule makes it amply clear that this Rule applies to all kinds of final reports prepared, under Section 173 of the Code, at the conclusion of an investigation. It also includes a cancellation report and makes it mandatory for the investigating officer to inform the complainant of the

conclusion/result of the investigation. His signature or thumb impression shall be taken on the final report. If the informant/complainant is not present, he shall be informed in writing by postcard or by the delivery of a notice by hand, and the fact that needful has been done, shall be noted in the final report. This Court observes that in addition to the abovementioned modes of informing the complainant, the investigating agency can take benefit of the modern ways of communication to show its fairness and transparency. Such a process should be reflected in the final report and relevant police diary. The cancellation report prepared by the investigating agency in this case does not show that signature or thumb impression of the complainant/informant was taken or he was informed regarding the conclusion of the investigation which is violative of the aforementioned Rule and reflects mala fide on the part of the investigating officer.

vii) The cancellation report prepared by the investigating agency in this case does not show that signature or thumb impression of the complainant/informant was taken or he was informed regarding the conclusion of the investigation which is violative of the aforementioned Rule and reflects *mala fide* on the part of the investigating officer. It is an axiomatic principle of law that when law requires a thing to be done in a particular manner, it should be done in that manner or not at all.

viii) …The following are the guidelines to be followed in the future by all the concerned: -

I. When an investigating officer intends to close the investigation and prepares a report under Section 173 of the Code including a cancellation report, he shall inform the complainant/ informer, and his signature or thumb impression should be taken on that report in accordance with the Rule 25.57 of the Rules.

II. All the reports prepared under Section 173 of the Code shall reflect that the needful was done and Rule 25.57 of the Rules was complied with in its letter and spirit. In addition to modes as provided in the aforementioned Rule to apprise the complainant/informer regarding the closure of the investigation and its result, modern ways of communication should also be utilized.

III. The cancellation report prepared in every criminal case shall be forwarded by the Superintendent of Police concerned, who shall forward the same furnishing his independent opinion/reasoning to agree with the same. Guidelines already provided in the case titled *Ehsan Ullah Chaudhry vs. The State, etc. – PLD 2023 Lahore 233* must be adhered to.

IV. No prosecutor shall forward a cancellation report to the concerned Magistrate if the same is not duly forwarded/endorsed by the concerned Superintendent of Police. The concerned prosecutor should also forward the report while furnishing his independent opinion.

V. The Magistrate, before adjudicating upon a cancellation report, must issue notice to all the concerned to provide them an opportunity for hearing to meet the requirement of the principle of natural justice *audi alteram partem.*

Conclusion: i) The rationale behind this Rule is that a cancellation report in a criminal case

should be filed through a senior supervisory officer to preclude the possibility of malpractice and arbitrariness on the part of the investigating officer.
ii) Such findings by the Magistrate are against the dictates of law and violative of the principle of natural justice *'audi alteram partem*'.
iii) The rule of justice embodied in the maxim *audi alteram partem* is not confined to judicial proceedings but extends to quasi-judicial and administrative proceedings, too.
iv) This principle "justice should not only be done but should manifestly and undoubtedly be seen to be done" also applies to administrative adjudications.
v) The principle of *audi alteram partem* is read in every statute as its integral part even if not explicitly provided therein and the violation of this principle is considered as a violation of law.
vi) Yes, it is mandatory for the investigating officer to inform the complainant through ordinary or modern ways of communication, about the conclusion/result of the investigation of cancellation report.
vii) Such act of investigation officer is violative of rule 25.57 and reflects his mala fide.
viii) See analysis portion.

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38. **Lahore High Court**
Awais Gohar v. Sumaira Adnan and 2 Others
Writ Petition No. 65237 of 2023
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC5618.pdf

Facts: Through present petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed judgment passed by the learned Additional District Judge and order passed by the learned Civil Judge.

Issues: i) When trial Court can proceed for open auction and fix the reserve price?
ii) What is the purpose of Punjab Partition of Immovable Property Act, 2012?
iii) Whether conduct of a party denotes his willingness to do or not to do an act?

Analysis: i) … Section 11(1) of the *Act* clearly commands to further proceed with the open auction when (i) co-owners refuse to participate in internal auction or (ii) only one co-owner shows his willingness to participate or (iii) internal auction under section 10 of the *Act* fails and the Court can proceed with open auction and fix the reserve price.
ii) Section 14 of the *Act* provides specific period of six months to complete the proceedings in such suits from their date of institution. The petitioner has already gained about nine months for making a suitable offer or properly assisting the learned Court in the proceedings of internal auction or show willingness to participate. By various means and adopting different tactics the petitioner defeated the very purpose of the *Act* which has been enacted for the purposes of expeditious partition of immovable properties and to provide remedy for ancillary matters.

iii) …the word "*willing*" is defined as „eager, co-operative, ready and prompt to act; voluntary; chosen; intentional". As per Oxford Advanced Dictionary (10th Edition) the word "*willingness*" means 'ready to do something"…it has been already observed that the word "*willingness*" also denotes the conduct of a relevant party.

Conclusion: i) If the co-owners refuse to participate in internal auction or only one co-owner shows willingness to participate in such auction and other(s) are not willing or when the internal auction under section 10 of the Act has failed, then the Court can proceed with open auction and fix the reserve price.
ii) The purpose of Punjab Partition of Immovable Property Act, 2012 is expeditious partition of immovable properties and to provide remedy for ancillary matters.
iii) Yes, "willingness" also denotes the conduct of a relevant party.

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39. **Lahore High Court**
Ayesha Hashmat Kamal and 2 Others v. Additional District Judge and 2 Others
Writ Petition No. 27381 of 2023
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC5606.pdf

Facts: Through this writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners sought enhancement of maintenance allowance of two minors.

Issues: i) Under what circumstances a grandfather is liable to pay maintenance allowance to his minor grandchildren?
ii) What is the standard of fixation of quantum of maintenance allowance of minors and when adverse inference can be drawn against father?
iii) Whether benefit of rewards, bonuses, perks and privileges of a father may be extended to minors to fix their maintenance allowance?
iv) Whether preference has to be given to the judgment rendered by the learned Appellate Court, in case of inconsistency in findings of learned two Courts below?
v) Whether maintenance award or decree should cover the entire education and other expenses if same is beyond financial condition of father?

Analysis: i) Perusal of above reflects that grandfather when is affluent, then the obligation to maintain children lies on the grandfather but only when father is poor, infirm and incapable of earning by his own labour and mother is also poor. This is not the position in the present case. The *respondent-father* is in decent employment and not indigent, thus, holding the *grandfather* responsible to contribute towards maintenance allowance is not warranted.
ii) Fixing quantum of maintenance always requires to strike a balance between

needs of minors and earnings of a father as well as his other sources. The award in favour of minors should not be incompatible or inconsistent with the financial conditions of father or the one who is held to be obliged by law to take care of children. The learned Family Courts should consider the education, medical, food expenses and other day to day needs of minor(s) at one side and on the other hand, the Courts are required to determine the financial status of the father. In *"Nazia Bibi and Others*" case (*supra*) this Court has laid down guidelines, as to how the power to ascertain the needs of minor(s) and financials of the father is required to be exercised by the learned Family Courts. When a father makes it impossible to reach a just conclusion as to his earning or paying capacity, by mis-declarations or unfair disclosures as well as by hiding his sources then the learned Family Courts are empowered to draw adverse inference…

iii) …There is no convincing reason available for not extending benefit of those rewards or bonuses, perks and privileges to the minors. Specially, when the respondent-father has no other liability and he has his permanent residence at the house of the grandfather and for temporary purposes, at the places of his posting, official residence is being used.

iv) …and argued that in case of inconsistency in findings of learned two Courts below, preference has to be given to the one rendered by the learned Appellate Court. This is correct when the interference of learned Appellate Court in findings of learned trial Court is based on cogent and confidence inspiring reasons. However, when such decision is not based on correct exposition of law and facts then leaving it to hold the field is unsafe.

v) …As far as the contention of learned counsel for the petitioners that maintenance award or decree should cover the entire education and other expenses is concerned, it is suffice to reproduce the relevant observation of the Supreme Court of Pakistan in case titled *"Tauqeer Ahmad Qureshi Versus Additional District Judge, Lahore and 2 Others"* (PLD 2009 Supreme Court 760)… *school fees of the minors are more than the rate of maintenance allowance granted by the Family Court, therefore, the annual increase granted by the Family Court should not be interfered with, has also no force. The mother, if she desires or can afford, may put the children in expensive schools but the father's obligation to maintain the minors is only to the extent of his status and financial condition and the Family Court must keep these factors in mind while granting maintenance allowance.*

Conclusion: i) Grandfather is liable to pay maintenance allowance to his minor grandchildren only when father is poor, infirm and incapable of earning by his own labour and mother is also poor.

ii) Fixing quantum of maintenance always requires to strike a balance between needs of minors and earnings of a father as well as his other sources. Adverse inference may be drawn against father when he makes it impossible to reach a just conclusion as to his earning or paying capacity, by mis-declarations or unfair disclosures as well as by hiding his sources.

iii) Yes, benefit of rewards, bonuses, perks and privileges of a father may be extended to minors to fix their maintenance allowance.
iv) This is correct when the interference of learned Appellate Court in findings of learned trial Court is based on cogent and confidence inspiring reasons.
v) No, father's obligation to maintain minors is only to the extent of his status and financial condition.

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40. **Lahore High Court**
Asad Mumtaz Warriach v. Ali Mumtaz Warriach
Civil Revision No.60871 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC5757.pdf

Facts: This civil revision under Section 115 of CPC is filed by defendant who has challenged the order passed by the Additional District Judge, whereby his application under Rule 4 of Order XXXVII CPC for setting aside ex-parte judgment and decree was dismissed.

Issue: What are the pre-conditions of summoning of a defendant, before initiating ex-parte proceedings against him?

Analysis: Rule 16 of Order V CPC requires the serving officer/process server to obtain signature of the defendant while delivering him a copy of the summons personally. Rule 17 of Order V CPC provides the manner in which the affixation is to be made. Necessary pre-conditions for invoking such rule is that either there is refusal of the petitioner or his agent to sign the acknowledgement or failure of the process server to find the petitioner after using all due and reasonable diligence. A copy of the summons should be affixed on the door or some conspicuous part of premises of the petitioner to satisfy requirement of said rule. Rule 8, Part B, Chapter 7, Volume IV, of the Rules and Orders of the Lahore High Court, Lahore requires that in case of sending a judicial notice for publication in a newspaper, the manager of the newspaper should send the copy of the paper containing the notice, under postal certificate, to the party for whose perusal it is intended at the address given in the notice. Publication in the newspaper is not sufficient in the absence of sending a copy of the paper to the party concerned.

Conclusion: Requirements of summoning as provided in Order V CPC must be complied with before initiating ex-parte proceedings against defendant.

LATEST LEGISLATION / AMENDMENTS

1. Para number 2 of notification no. PRA.32-24/2022/561 dated 05-07-2023 has been substituted by Notification No.165 of 2023 in the Punjab Sales Tax on Services Act, 2012.

2. Powers of enforcement officer (Enforcement Unit-1) have been assigned through Notification No.166 of 2023, Punjab Sales Tax on Services Act, 2012.
3. Powers of Deputy Commissioner (Enforcement V, Unit-3) have been assigned through Notification No.167 of 2023 in the Punjab Sales Tax on Services Act, 2012.
4. Powers of Additional Commissioner and Enforcement Officer Audit-cum-Risk Compliance Officer have been assigned vide Notification No.168 of 2023 in the Punjab Sales Tax on Services Act, 2012.
5. Powers of Enforcement Officer have been assigned vide Notification No.169 of 2023 in the Punjab Sales Tax on Services Act, 2012.
6. Powers of Commissioner (Appeals-I &II) have been assigned vide Notification No.170 of 2023 in the Punjab Sales Tax on Services Act, 2012.
7. Amendments in the rules 12- 14 of Punjab Police (Efficiency and Discipline) Rules, 1975 have been made through Notification No.174 of 2023.
8. Amendments in schedule after serial no 4 in the Directorate of Pest Warning and Quality Control of Punjab Service Rules, 1987 have been made through Notification No.175 of 2023.
9. Punjab Arms Rules, 2023 has been promulgated vide Notification No.176 of 2023.
10. Amendments in rules 5 & 6 has been made in the Punjab Pension Fund Rules, 2007 vide Notification No.177 of 2023.
11. Second Schedule under the head Prosecution Department of Amendment in the Punjab Government Rules of Business 2011vide Notification No.178 of 2023.
12. Amendment in the Punjab Specialized Healthcare and Medical Education Department (General, Specialists and Miscellaneous Posts) Services Rules, 1981 have been made through Notification No.180 of 2023.

SELECTED ARTICLES

1. MANUPATRA

https://articles.manupatra.com/article-details/Implications-of-Internet-Bans-on-Online-Education-Addressing-Constitutional-Conflicts-and-Educational-Rights

Implications of Internet Bans on Online Education: Addressing Constitutional Conflicts and Educational Rights By Anjali Tripathi

Internet restrictions, while intended to protect public safety, pose serious problems for the right to an education, especially in unstable political and social environments. The negative effects of internet restrictions on e-learning programmes and students' access to education highlight the urgent need for reasonable alternatives. Temporary shutdowns hamper educational advancement while maybe preventing the spread of hate speech and false information. It is critical for decision-makers to give the right to education top

priority during internet censorship and to implement alternatives to promote students' learning in order to resolve this dispute. To ensure that students can continue to obtain high-quality instruction despite difficult circumstances, it is crucial to strike a balance between public safety and academic freedom. Societies may protect both the right to free speech and the right to an education by encouraging inclusive and flexible approaches, which will produce a population of informed and well-rounded citizens.

2. **MANUPATRA**
https://articles.manupatra.com/article-details/Challenges-and-Remedies-to-WTO-Dispute-Settlement

Challenges and Remedies to WTO Dispute Settlement By Ipsita Aparajita Padhi

The dispute settlement system has been created for smooth and better functioning of the trade relations among the member states of World Trade Organisation. Though the trade sanctions are mostly for non-compliance, the question still remains that in what authority the body does it. The issue arises when the legislation process starts expressing the competency of internal laws in accordance in agreement as well as GATT. Compulsory Alternate Dispute Resolution should be there as settlement process and after its exhaustion they can approach the Dispute Settlement Unit. It has a very heavy workload of cases that are to be resolved but within a stipulated time period. However, this can be prevented during the settlement procedure that is non-binding in nature.

3. **YALE LAW JOURNAL**
https://www.yalelawjournal.org/article/the-modern-state-and-the-rise-of-the-business-corporation

The Modern State and the Rise of the Business Corporation By Taisu Zhang & John D. Morley

The rise of the modern state was a necessary condition for the rise of the business corporation. A typical business corporation pools together a large number of strangers to share ownership of residual claims in a single enterprise with guarantees of asset partitioning. This arrangement requires the support of a powerful state with the geographical reach, coercive force, administrative power, and legal capacity necessary to enforce the law uniformly among the corporation's various owners. Strangers cannot cooperate on the scale and with the legal complexity of a typical business corporation without a modern state and the legal apparatus it supplies to enforce the terms of their bargain. Other historical forms of rule enforcement, such as customary law among closely knit communities and commercial networks like the Law Merchant, are theoretically able to support many forms of property rights and contractual relations but not the business corporation.

4. **YALE LAW JOURNAL**
https://www.yalelawjournal.org/article/the-perils-and-promise-of-public-nuisance

The Perils and Promise of Public Nuisance By Leslie Kendrick

Public nuisance can seem unusual, even outlandish. At worst, it is a potentially capacious mechanism that allows executive-branch actors to employ the judicial process to address legislative and regulatory problems. Nevertheless, its perils are easily overstated and its promise often overlooked. Historically, public nuisance has long addressed problems such as harmful products. Doctrinally, it accords better with tort law than is commonly recognized. And institutionally, it functions as a response to nonideal conditions—specifically, where regulatory mechanisms underperform.

5. **OXFORD JOURNAL OF LAW AND RELIGION**
https://academic.oup.com/ojlr/article/5/1/94/1752338?searchresult=1

Forgiveness and Restorative Justice: Is It Necessary? Is It Helpful? By Joanna Shapland

Though forgiveness does not require apology (nor even knowing who the offender is), the important interactive and communicative aspects of restorative justice link it firmly to apology. Yet apology is complicated, being in the case of crime to both the victim and the state. When considering forgiveness, the immediate pairing is the possibility of forgiveness by victims to offenders, but it is also conceivable to consider forgiveness by offenders to themselves and forgiveness of the offender by supporters/families and the local community (though not, it seems, the state). Empirically, these victim reactions include achieving closure (for both offenders and victims), supporting offenders' efforts to change their lives, and appreciating offenders' apologies and courage in answering questions and communicating. Healing and reconciliation are less mentioned (or relevant). The word 'forgive' is only rarely mentioned. Forgiveness may be appropriate as a social action in many different contexts: when someone has knocked into us in a crowded street, after an accident, if a precious mug has been broken. Restorative justice, which involves the offender and victim themselves in communication, is now suggested to be offered at all stages of the criminal process.
