

# LAHORE HIGH COURT BULLETIN



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## FORTNIGHTLY CASE LAW BULLETIN

(01-11-2024 to 15-11-2024)

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

### JUDGMENTS OF INTEREST

Sr. No.	Court	Subject	Area of Law	Page
1.	Supreme Court of Pakistan	Deductibility of Input Tax for Destroyed Goods under Section 7 of the Sales Tax Act, 1990; Linkage of Input Tax with Tax Period versus Specific Goods; Effect of Retrospective Exemptions on Past Input Tax Adjustments; Conditions for a Valid Refund Claim under Section 10 of the Sales Tax Act, 1990; Adjustment of Input Tax for Supplies During Subsequently Exempted Periods.	Tax Law	1
2.		Distinction between original and appellate adjudication under the Sales Tax Act, 1990; whether the provisos to Section 45-B(2) of the Sales Tax Act, 1990, are mandatory or directory?; the legal basis for dissenting Judge regarding the interpretation of the provisos to Section 45-B(2) of ibid Act; Referee Judge align his opinion with the view of author judge.		2
3.		A plaint cannot be rejected in piecemeal; the guiding principles to reject a plaint based on cause of action; the objectives of the company law reform Act 2017; the key provisions of the Partnership Act, 1932; the term firm property under section 14 of the 1932 Act; the purpose of the Specific Relief Act, 1877 and type of remedy; factors considered in granting specific relief; Importance of illustrations in interpreting legal provisions; the grant of specific performance in partnership case; modification of procedural rules to promote substantial justice.	Civil Law	4
		Purpose of progress reports by Wapda; In the absence of implementation Bench WAPDA need not submit further progress report in this Court.		

4.	Supreme Court of Pakistan	Registration of FIR under the Anti-terrorism Act, 1997; the explosive substance Act, 1908 and Section 302 PPC; mentioning wrong time for registration of FIR; justification for presence of chance witnesses; joint identification parade; non-attribution of role during identification parade.	Criminal Law	8
5.		Evidentiary value of the prosecution evidence qua identification of the petitioner during identification parade after his nomination in this case requires further inquiry for post arrest bail; abscondence of an accused at bail.		9
6.	Lahore High Court	Dismissal from service; Petition under Section 33 of the Punjab Industrial Relations Act, 2010, workman; misconduct.	Labour Law	10
7.		Criteria/ procedure for appointment of Head Constable in Police Department; In whose favor extraordinary constitutional jurisdiction can be used.	Service Law	12
8.		Non-framing of issue on disputed point; Authority of Appellate Courts to address improperly framed issues; Requirement to decide pending applications before deciding the main case; Mode of admitting secondary evidence in the absence of primary evidence	Civil Law	13
9.		Applications for trademark revocation, invalidation, or rectification under Trade Mark Ordinance, 2001 before High Court or District Court; avoid fragmented Intellectual property claims; How term 'proceedings elaborated, the jurisdiction of Intellectual property tribunal.	Intellectual Property Law	15
10.		Effects of contradictions in prosecution evidence; Effect of absence of independent corroborative evidence; Legal standard for giving the benefit of doubt; Effect of non-appearance of recovery witness.	Criminal Law	16
11.		Minor discrepancies in statements of prosecution witnesses recorded after a long time of occurrence; sanctity of a dying declaration of the deceased soon after the occurrence; decision of each criminal case on its unique facts and circumstances.		17
12.		Merger of two or more Companies into one; stamp duty; instrument	Stamp Act	18
13.		A legal sanctity document rebut another; Settlement Department reallocate a plot after a PTD issuance without canceling the		20

		original allotment; fraud invalidate all proceedings; appellate court findings take precedence in case of conflicting judgments.	Civil Law	
14.		Estate of issueless male Muslim would devolve upon his heirs/sharers; residuary and distant kindred; Principle of Radd in islamic inheritance		21
15.		Competent authority provide notice and a reasoned order when deviating from the Inquiry Officer's recommended penalty; Court intervenes only if the penalty is unlawful or disproportionate; ensuring it is suitable, necessary, and proportionate to the proven misconduct.	Service Law	22
16.		Acquisition of land; Award; Reference application under section 18; standard for fair compensation.	Civil Law	23
17.	Lahore High Court	Contribution of Article 25 of the Universal Declaration of Human Rights (UDHR) in recognition the right to adequate housing; CEDAW addressing the need for States to ensure the protection of women; conventions and declarations that complement CEDAW in addressing discrimination and violence; measures recommended by Beijing Platform's Strategic Objective for preventing and addressing violence against women; guidelines provided by the United Nations Special Rapporteur on Adequate Housing; Protections provided by United Nations Convention on the Rights of the Child (UNCRC); protections under ILO Convention to safeguard children from child labor; United Nations Guidelines for the Alternative Care of Children; Constitutional provisions to support the interpretation of housing as a fundamental right; doctrine of parens patriae in support for vulnerable populations; Primary legal and administrative frameworks and Laws governing shelter homes and protection centers for women in Punjab; mandate of the Punjab Women Protection Authority Act, 2017 and body constituted under the same Act; Monitoring mechanisms and measures mandated under the Punjab Protection of Women against Violence Act 2016 and Punjab Women Protection Authority Act 2017; Key guidelines developed by the Social Welfare Department for the administration, functioning, and oversight of Dar-ul-Amans/shelter homes in Punjab; Suggestive	Constitutional Law	24

		measures for the effectiveness of Protection centres and Shelter Homes; Legal consequences and penalties provided under Pakistan Penal Code for forced marriage; Regulation of internal workings of the government as per Punjab Government Rules of Business 2011; Responsibilities of the Social Welfare Department under Punjab Rules of Business; Functions of National Commission on the Rights of Child Act, 2017; Roles and functions of the National Commission on the Rights of the Child (NCRC) and the National Commission for Child Welfare and Development (NCCWD); Provincial legislations for the protection of children; Vagrancy Ordinance; Key responsibilities and powers of the Child Protection and Welfare Bureau (CPWB) under the Punjab Destitute and Neglected Children Act 2004; Limitations under Section 20 of the Punjab Destitute and Neglected Children Act impose on the CPWB; Extent of directions of court to initiate legislative measures.		
18.	Lahore High Court	Issuance of show cause notice by Competition Commission of Pakistan under Competition Act, 2010; Power of the Competition Commission; Power of High Court to deal with the fact of issuance of show cause notice in writ jurisdiction; Application of Doctrine of ripeness.	Civil Law	31
19.		Powers and duties of a Secretary of Department of Environment; sustainable development.	Environmental Law	35
20.		Duty of court to Decide Legal Issues Not Pressed by Parties; Power of court to Address General Issues of Suit Barred by Law Without Specifying Limitation; General Approach to Addressing issue of Maintainability of suits Under Order VII Rule 11 CPC.		36
21.		Effects of Non-compliance of procedural requirements of the Punjab Partition of Immoveable Property Act, 2012; Mandatory requirement of presence of all co-owners or their agents in internal Auction; right of fair trial; Act of court should not prejudice the rights of the parties; right of every citizen to be treated in accordance with law; importance of right to be heard in all judicial proceedings.	Civil Law	37
22.		Competent Forum for Challenging Validity of Judgment, Decree, or Order under Section 12(2) C.P.C; Jurisdiction to Entertain Application under Section 12(2) C.P.C. when		38

		Supreme Court Refuses Leave to Appeal; Prohibition on Reinitiating Litigation under Section 12(2) C.P.C. after Affirmation by Higher Forums; Relevance of Limitation in Cases Where Petitions Are Declared Non-Maintainable.		
23.	Lahore High Court	Family Court to decide cases within six months; using any procedure to approach the High Court not explicitly prohibited by law.	Family Law	40
24.		Appropriate course for the courts, when proclaimed offenders surrender/appear with application to recall such order; physical surrender by the accused is necessary.	Criminal Law	41
25.		Rejection of plaint under Order VII, Rule 11 CPC; Previous suit by the donor and its withdrawal; Physical and mental infirmity of donor while making statement before court; Competence of court to convert petition under Section 12(2) CPC into plaint and vice versa.	Civil Law	41
26.		Exercise of authority by the Chief Minister, imposing complete ban on all kinds of transfers / postings.	Constitutional Law	42
27.		Scope of Constitutional Jurisdiction with regard to give Retrospective Effect to an Omission; Legal Effect of Precedents.	Service Law	43
28.		Resolution of factual controversy under Article 199 of Constitution of Pakistan permissible or not; Primary purpose for relocating sawmills and related operations away from forests; Rationale behind shifting sawmills, firewood godowns, and furniture showrooms away from forests.	Civil Law	44
29.		Medical evidence and its corroboration; effect of belated recovery of crime weapon; non-association of people of vicinity with recovery proceedings; report of Punjab Forensic Science Agency if recovery of crime weapon has been disbelieved; importance of establishment of motive by prosecution; upholding of conviction in case of shaky evidence; Benefit of doubt in favor of accused	Criminal Law	45
30.		Permanent exemption of accused from his appearance in the trial under Sections 540-A and 205 of the Code of Criminal Procedure 1898; Recording of evidence in the presence of accused or in presence of his counsel or through virtual presence on video link under Section 353 of the Code of Criminal Procedure 1898.		47

31.	Lahore High Court	Validity of auction sale despite appellants failure to deposit 20% under Rule 90; Impact of non-compliance with Rule 84's "forthwith re-sale" requirement on auction validity; Sufficiency of a single bidder to meet public auction standards; Legality of offering property to successive bidders without fresh auction after default; Right of decree-holder bank, as sole remaining bidder, to acquire property without re-auction.	Civil Law	49
32.		Effect of not providing particulars and detail of fraud in pleadings in terms of Order. VI Rule 4 of CPC; consequences of evidence beyond pleadings; presumption to be adduced from lack of cooperation (human conduct) by a party; Whether presumption of fact is rebuttable; Discretionary jurisdiction of the court to issue a decree of specific performance; secondary evidence to prove the signature of a deceased witness on a particular document.		51
33.		Jurisdiction of civil court in matters relating to family laws, constitutional petition against interim order, delegated right of divorce, injunction against arbitration council	Family Law	53
34.		Exposition of Instructions, i.e, "either or survivor" in joint account holder.	Banking Law	55
35.		Pleadings no substitute to the evidence; the effect of inconsistency between pleadings and evidence; principle governing transfer of property by an attorney to his kith and kin; scope of revisional jurisdictional of High Court.	Civil Law	55
36.		Appointment withdrawal based solely on an FIR is unlawful if the accused is acquitted and found innocent; Second inquiry without involving the accused violates natural justice and due process under Article 10-A; Allowing a Constable to serve but denying promotion to Sub-Inspector on the same allegations creates a paradox; Withdrawal of an appointment deprives an individual of their constitutional right to livelihood.	Service Law	57
37.		Aspects of forensic testing; techniques used for qualitative test and effects of absence of quantitative analysis.	Criminal Law	58
38.		Presumption as to genuineness of a document; In case of admitted documents requirement of examination of attesting witness	Civil Law	59
39.		Trial court obligated to follow the directives of the higher court's remand order; re-admission of case at its original number; pre-remand		60



	evidence retained under Order XLI Rule 23 CPC; closing evidence after remand comply with settled law.	
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#### LATEST LEGISLATION/AMENDMENTS

1.	The official Gazette of Pakistan dated 21 <sup>st</sup> October 2024; Constitution (Twenty-sixth Amendment) Act, 2024.	61
2.	The official Gazette of Pakistan dated 2 <sup>nd</sup> November 2024; Deposit Protection Corporation (Amendment) Act 2024.	61
3.	The official Gazette of Pakistan dated 2 <sup>nd</sup> November 2024; Establishment of Special Court (Overseas Pakistan Property) Act, 2024.	61
4.	The official Gazette of Pakistan dated 2 <sup>nd</sup> November 2024; Banking Companies (Amendment) Act, 2024.	61
5.	The official Gazette of Pakistan dated 4 <sup>th</sup> November 2024; Supreme Court (Number of Judges) (Amendment) Act, 2024.	61
6.	The official Gazette of Pakistan dated 4 <sup>th</sup> November 2024; Supreme Court (Practice and Procedure) (Amendment) Act, 2024.	61
7.	The official Gazette of Pakistan dated 4 <sup>th</sup> November 2024; Islamabad High Court (Amendment) Act, 2024.	61
8.	The official Gazette of Pakistan dated 4 <sup>th</sup> November 2024; Pakistan Army (Amendment) Act, 2024.	61
9.	The official Gazette of Pakistan dated 4 <sup>th</sup> November 2024; Pakistan Air Force (Amendment) Act, 2024.	61
10.	The official Gazette of Pakistan dated 4 <sup>th</sup> November 2024; Pakistan Navy (Amendment) Act, 2024.	61
11.	Notification No.SO (E&M)3-4/2024 dated 7 <sup>th</sup> November; The Punjab Motor Vehicles Rules, 1969	61

#### SELECTED ARTICLES

1.	Digitising The Uk Securities Market: The Case Against And A Proposal To Enfranchise Indirect Investors By Eva Micheler and Elena Christine Zaccaria	62
2.	The No Reflective Loss Principle Is Not An Old-Fashioned Corporate Law Relic By Varghese George Thekkel	62
3.	Bind Us Together: Coalitional Public Policy Advocacy in Medical-Legal Partnerships By James Bhandary-Alexander & Dina Shek	63
4.	Right to Repair: Unlocking the Hidden Potential of Consumer Empowerment By Vidhan Dixit	63
5.	Legal Recognition of Succession Rights of Women Under Hindu Law By Mizana Kabeer	64

1. **Supreme Court of Pakistan**  
**The Commissioner Inland Revenue, Legal Zone, Large Taxpayers Office,**  
**Lahore v. Mayfair Spinning Mills Ltd. etc.**  
**Civil Appeals. No. 947 of 2002, 980, 981 & 982 of 2007 and 224 of 2010 And**  
**Civil Petition No. 246 of 2009**  
**Mr. Justice Yahya Afridi, Mr. Justice Syed Hasan Azhar Rizvi, Mr. Justice**  
**Shahid Waheed**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/c.a. 947\\_2002.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.a. 947_2002.pdf)

- Facts:** The case involves disputes over input tax adjustments under the Sales Tax Act, 1990. In one instance, the respondent company claimed input tax refunds for raw materials destroyed in a fire. Additional disputes arose over retrospective exemptions on pharmaceutical supplies, impacting prior tax adjustments by manufacturers. The Lahore High Court upheld the taxpayer's refund claim, holding the legislative intent of input tax adjustment based on tax periods rather than actual use of goods. This judgment was challenged by the tax authorities.
- Issues:**
- i) Can input tax be deducted under section 7 of the Sales Tax Act, 1990 in respect of goods which got destroyed by the fire?
  - ii) Whether the payment of input tax is related to the tax period or to the goods in relation to which it was paid?
  - iii) Can exemptions with retrospective effect nullify past adjustments?
  - iv) Under what circumstances can a valid refund claim be made under section 10 of the Sales Tax Act, 1990?
  - v) Can input tax be adjusted against output tax for supplies made during a period subsequently declared exempt?
- Analysis:**
- i) The words 'taxable supplies made, or to be made' in section 7 do not limit the scope of the correlation between the purchase of the input/raw material and the actual manufacture or production of taxable supplies, that is the making of taxable supplies. Instead, they expressly expand its legal ambit to include input/raw materials intended for use in future for making taxable supplies. ... Denying such adjustment solely because the raw material has not been consumed during the same tax period contradicts the legislative intent.
  - ii) The claim that input tax is related more to a tax period rather than the goods in relation to which it was paid is also supported by the provisions of section 10 (excess amount to be carried forward or refunded) and section 11 (assessment of tax) of the Sales Tax Act, 1990.
  - iii) Demanding repayment of these benefits already accrued to and availed of by the respondents-taxpayers, by virtue of the changes introduced through the SROs, would adversely affect their vested rights and undo transactions that are past and closed, which cannot be done through subordinate legislation without specific authorization by primary legislation.
  - iv) A valid refund claim under section 10 of the Sales Tax Act can be lawfully made when the amount of 'input tax' cannot be fully adjusted against the 'output tax' within a tax period. In such circumstances, the excess amount of 'input tax' is to be

refunded to the registered person within ninety days of filing the tax return.

v) The benefit of input tax adjustment availed by the respondents for the tax periods of June 2002 and July 2002 had already accrued, availed of and crystallized in their favour, constituting a past and closed transaction, which is unaffected by the change introduced through SROs Nos. 555 and 869.

- Conclusion:**
- i) Input tax deduction is allowed for goods intended for taxable supplies, even if destroyed before use.
  - ii) Input tax is tied to the tax period, not specific goods.
  - iii) Retrospective exemptions cannot undo past and closed transactions.
  - iv) Refund is allowed when input tax exceeds output tax in a tax period.
  - v) Adjustments made before exemption are valid and unaffected by subsequent changes.

**2. Supreme Court of Pakistan  
Commissioner Inland Revenue, Zone-III. RTO,  
Rawalpindi, etc. v. M/s Sarwaq Traders, Rawalpindi, etc.  
Civil Review Petition No.275 of 2022 in Civil Petition No.4599 of 2021.  
Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik  
[https://www.supremecourt.gov.pk/downloads\\_judgements/c.r.p. 275 2022.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.r.p. 275 2022.pdf)**

**Facts:** The judgment under review examined if the first and second provisos of Section 45B(2) of the Sales Tax Act, 1990, are mandatory. The Court ruled them mandatory, making any decision by the Commissioner (Appeals) beyond 180 days invalid. The department seeks a review, arguing this mandatory interpretation unfairly impacts both taxpayers and the department due to delays. They propose the timeframe should be treated as directory. The taxpayer's initial appeal was eventually accepted by the Appellate Tribunal because of the Commissioner's delay, a decision later upheld by the Lahore High Court and reaffirmed in the current judgment. The department argues that this ruling mistakenly equates appellate and original adjudication processes.

- Issue:**
- i) What is the distinction between original and appellate adjudication under the Sales Tax Act, 1990, as interpreted by the Court?
  - ii) What test did the Court apply to determine whether the proviso's to Section 45-B(2) of *ibid* Act, are mandatory or directory?
  - iii) How did the Court justify its interpretation of the statutory timeframe as directory for appellate adjudication?
  - iv) What did the Court conclude regarding the first and second proviso's to section 45B(2) of *ibid* Act?
  - v) What was the legal basis for dissenting judge regarding the interpretation of the provisos to Section 45-B(2) of *ibid* Act?

**Analysis:** i) Review of the above provisions show that section 179 of the Customs Act, 1969 deals with original adjudication and is in *pari materia* with the erstwhile section

36(3) of the Sales Tax Act, 1990 and not with section 45B(2) as held by the judgement under review while discussing the importance of Mujahid Soap to the instant case

ii) It is important to underline that the test to ascertain whether a provision of a statute is directory or mandatory, the principle as laid down in *Super Asia*<sup>9</sup> provides that “perhaps the clearest indicator is the object and purpose of the statute and the provision in question. It is the duty of the court to garner the real intent of the legislature as expressed in the law itself.” The legislative intent can be drawn by consideration of the entire statute, its nature, its object and the consequences whether it will cause serious inconvenience or injustice to persons as a result of construing the provision in one way or the other. If by holding a provision mandatory serious general inconvenience will be created for innocent persons of the general public without furthering the object of the enactment, the same should be construed as directory.

iii) The object, policy and purpose of the first and second provisos to section 45(B)(2) of the Act is totally different as it deals with the appellate adjudication. The said provision is invoked by a taxpayer by filing an appeal against the order-in-original. Appellate adjudication, as opposed to original adjudication, takes a different focus, as it deals with the right to appeal of a taxpayer. Right to appeal of a taxpayer is a right that flows from the constitutional rights of access to justice and fair trial guaranteed to a taxpayer under articles 9 and 10-A of the Constitution of the Islamic Republic of Pakistan, 1973.

iv) We, therefore hold that the first and second provisos to section 45(B)(2) are directory provisions and lapse of the statutory timeframe will not affect the proceedings before the Commissioner (Appeals) who shall conclude the appeal in accordance with law by deciding the appeal on its merits.

v) I have read the opinion (...) however, I do not concur with the same (...) Given that this is a factual matter, it is necessary for the Tribunal to consider the dates of adjournments for the purposes of calculating the delay in terms of Section 45-B of the Act.

**Conclusion:** i) See analysis No.i .

ii) Statutory intent guides if provisions are directory or mandatory.

iii) This provision protects taxpayers’ constitutional right to appeal.

iv) These provisos are directory; time lapse doesn’t affect appeal proceedings.

v) Tribunal must assess adjournment dates to calculate delay under Section 45-B.

**Referee Judge Mr Justice Syed Hasan Azhar Rizvi Opinion:**

**Issues** vi) How did the Referee Judge, align his opinion with author judge view?  
vii) How does the need to avoid undue hardship influence the interpretation of mandatory and directory provisions?

**Analysis:** vi) I subscribe to the view taken by Justice Syed Mansoor Ali Shah that the first and second provisos to section 45(B)(2) of the Act should be treated as directory provisions. This interpretation effectively safeguards the tax-payer’s constitutional

rights while promoting efficient and fair tax governance.

vii) It is a settled legal principle that provisions should not be interpreted in a manner that imposes undue hardship on innocent members of the public or undermines the legislative intent. If holding a provision as mandatory would create significant inconvenience without furthering the objectives of the enactment, it should be construed as directory. Thus, provisions must not be interpreted in a way that limits or undermines fundamental rights.

**Conclusion:** vi) See analysis No.vi.  
vii) Provisions should avoid undue hardship and uphold legislative intent.

**3. Supreme Court of Pakistan**  
**Mst. Rehmat Begum v. Mehfooz Ahmed and others**  
**Civil Petition No.49-K of 2022**  
**Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/c.p.\\_49\\_k\\_2022.pdf](https://www.supremecourt.gov.pk/downloads_judgements/c.p._49_k_2022.pdf)

**Facts:** The case involved a dispute over a 50% partnership stake in a business. Initially, two partners managed the business, but they later retired, and new partners took over, with one designated as managing partner. An agreement was made for one partner to sell their share to the other for Rs.5 crores, with partial payment made. However, the final transaction was delayed due to personal reasons, leading to the managing partner filing a suit for specific performance. The suit was dismissed by the Trial Court and upheld on appeal, but the High Court ordered the Trial Court to decide the case on merits. Hence; the Civil Petition.

**Issues:**

- i) Can a plaint be partially rejected under Order VII Rule 11, CPC if at least one prayer is maintainable?
- ii) What key elements must a plaintiff demonstrate to establish entitlement to relief in court?
- iii) What key principles guide the Court in deciding whether to reject a plaint based on cause of action, defendant's pleas, and mixed legal and factual questions?
- iv) What are the key objectives of the company law reform Act 2017?
- v) What is included in “body corporate” under Section 2(9), and what jurisdiction does Section 5 grant to the High Court under ibid Act?
- vi) What are the key provisions of the Partnership Act, 1932, regarding partnership formation, retirement, and dissolution?
- vii) What does Section 14 of the 1932 Act define as firm property?
- viii) What is the purpose of the Specific Relief Act, 1877, and what type of remedy does it provide?
- ix) What factors must a court consider when granting specific relief?
- x) Why are illustrations important in interpreting legal provisions?
- xi) How does the court decide on granting specific performance in partnership cases?
- xii) Under what circumstances can a court modify procedural rules to promote substantial justice?

**Analysis:** i) This is a well-known elucidation of law that the plaint cannot be rejected in piecemeal under Order VII Rule 11, CPC. Even if one prayer contained in the plaint

is found to be maintainable in the relevant facts and circumstances of this case, the plaint cannot be rejected in part. (...) This rule does not justify the rejection of any particular portion of the plaint or a piecemeal rejection, as the concept of partial rejection is seemingly incongruous to the provisions of Order VII Rule 11, CPC. (...) Where there is a joinder of multiple causes of action, and at least on some of these causes could potentially lead to a decree, a plea of demurrer cannot be admitted to reject the plaint. Similarly, if there are several parties and the plaint discloses a cause of action against one or more of them then, too, the plaint cannot be rejected, as what is required in law is not the reading of the plaint in fragments but reading it as a whole.

ii) What is essentially required is that the plaintiff must demonstrate that not only a right has been infringed in a manner that entitles him to a relief but also that when he approached the Court, the right to seek that relief was in subsistence. (...) No doubt, under Order VII Rule 7, CPC, the plaintiff is obligated to state specifically the relief which he claims either simply or, in the alternative, it is further explicated that the plaintiff does not need to ask for general or other relief which may always be given as the Court may deem just, as if it had been asked for, and the same rule shall apply to any relief claimed by the defendant in his written statement. Whereas the exactitudes of Order VII Rule 8 make it clear that where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly.

iii) Nothing more than the averments of the plaint have to be seen for the purposes of adjudicating whether the plaint unveiled any cause of action. However, the dearth of proof or weakness of proof in the circumstances of the case did not furnish any justification for coming to the conclusion that there was no cause of action disclosed in the plaint, because for the rejection of plaint under Order VII Rule 11, CPC, the Court cannot take into consideration pleas raised by the defendants in the suit, as at that stage, the pleas raised by the defendants are only contentions in the proceedings, unsupported by any evidence on record. However, if there is some material apart from the plaint which is admitted by the plaintiff, the same can also be looked into and taken into consideration by the Court while deciding an application under Order VII Rule 11, CPC. Moreover, the Court may, in exceptional cases, consider the legal objections in the light of averments of the written statement but the pleading as a whole cannot be taken into consideration for the rejection of plaint. The Court has to presume the facts stated in the plaint as correct for the determination of such application. In case of any mixed questions of law and facts, the right methodology and approach is to allow the suit proceed to the written statement and discovery phases and to determine the matter either by framing preliminary issues or through a regular trial. (...) The Court is under an obligation to give a meaningful reading to the plaint and if it is manifestly vexatious or meritless, in the sense that it does not disclose a clear right to sue, the court may reject the plaint, but before rejecting, it must determine whether litigation of such a case will be absolutely vexatious and an abuse of the process of the court.

iv) In order to bring in reformation relating to company law, the Act was promulgated with the objectives of facilitating corporatization and promoting development of corporate sector, regulating corporate entities for protecting interests of shareholders, creditors, other stakeholders and the general public, and safeguarding minority interests in corporate entities.

v) According to Section 2 (9) of the Act, “body corporate” or “corporation” includes (a) a company incorporated under this Act or company law; or (b) a company incorporated outside Pakistan, or (c) a statutory body declared as body corporate in the relevant statute, but does not include (i) a co-operative society registered under any law relating to cooperative societies; or (ii) any other entity, not being a company as defined in this Act or any other law for the time being. While Section 2 (17) of the Act defines “company”, which means a company formed and registered under this Act or the company law. Section 5 of the Act deals with the jurisdiction of the Court and creation of benches by means of which, the jurisdiction has been conferred upon the High Court, having jurisdiction in the place at which the registered office of the company is situated, with a non-obstante clause that no civil court as provided in the CPC or any other court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Court is empowered to determine by or under this Act.

vi) While according to Section 4 of the Partnership Act, 1932 (“1932 Act”), “Partnership” is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called “partners” individually and “a firm” collectively, and the name under which their business is carried on is called the “firm name”. Section 7 of the 1932 Act, construes that where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership then in such eventuality, the partnership shall be construed as “partnership at will”. In the swing of things, the procedure for retirement of a partner is provided under Section 32 of the 1932 Act, whereby a partner may retire (a) with the consent of all the other partners, (b) in accordance with an express agreement by the partners, or (c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire. Last but not the least, Section 39, 40 and 44 of the 1932 Act are germane to the dissolution of a firm with the consent of all the partners or in accordance with a contract between the partners and/or dissolution by the Court by which, upon a suit by a partner, the Court may dissolve a firm on any of the grounds already mentioned under Section 44.

vii) In keeping with Section 14 of the 1932 Act, subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired by purchase or otherwise, by, or for the firm or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business and unless the contrary intention appears, property, rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm.

viii) The genus of specific relief, in fact, articulates the remedy afforded by the Court to ensure the implementation of specific performance and obviate the contravention of an obligation. The Specific Relief Act, 1877, (“1877 Act”) grants access to the legal framework meant for dispensing specific relief in the civil lawsuits for ensuring justice and ordering a party to perform the contractual obligations. The nature of relief is an equitable one, which is structured on the philosophy of evenhandedness and justness.

ix) While awarding or declining this discretionary relief, the Court, according to the facts and circumstances of the case, ought to have weighed up the rudiments sine qua non for the specific relief, such as the nitty-gritties of the contract executed between the parties, the demeanor of the person concerned, and the level-headedness and judiciousness of enforcing the relief which is broad enough to assimilate a wide range of contractual disputes vis-à-vis the mode and manner of specific relief obtainable in civil suits. (...)The letter of the law makes it somewhat discernible that the jurisdiction to grant a decree of specific performance is discretionary, as encapsulated under Section 22 of the 1877 Act, but exercise of such discretion should not be arbitrary. Rather, it must be based on sound and reasonable grounds guided by judicial principles.

x) It is an elementary rule of law that the illustrations should not be considered redundant or inconsequential, as they are evenly significant and constructive for securing the proper meaning of the provision. While they cannot influence the ordinary connotation of the section, they are beneficial to demonstrate the means and methods by which such sections are set in motion while interpreting the law.

xi) Each case has to be decided on its own facts, the Court cannot force someone to file a suit for dissolution of partnership or rendition of accounts, but it has to see whether specific performance of contract is possible or not,

xii) Equity and justness vindicates and gives a reason for refraction of the rules of procedure, especially, where no particular stipulation of law is desecrated or outraged, but it is found more conducive to foster substantial justice between the parties with judicious mindfulness of the state of affairs ingathered succeeding to the institution of the lawsuit which may have rational impact of rights and entitlement. Hence, in such situations, the court can take cautious cognizance of the later vicissitudes of fact and law also, to mould the relief in order to advance the cause of justice.

- Conclusions:**
- i) A plaint cannot be partially rejected if any part of it is maintainable.
  - ii) The plaintiff must prove an active right to relief when filing, clearly stating each claim, though the court may grant additional reliefs as deemed just.
  - iii) The Court should assess the plaint alone for cause of action, avoid considering defendant's pleas, and let mixed issues proceed to trial.
  - iv) The Act promote corporatization, protect stakeholders’ interests, and safeguard minority rights in corporate entities.
  - v) See analysis No.vi.
  - vi) See analysis No.vii.



- vii) This section defines firm property as all assets acquired for the firm's business, including goodwill, unless stated otherwise.
- viii) This Act provides equitable remedies to enforce contractual obligations and ensure justice.
- ix) A court must consider contract details, parties' conduct, and the fairness of enforcement when granting specific relief.
- x) Illustrations are essential for clarifying the application of legal provisions without altering their meaning.
- xi) The court assesses each partnership case individually to determine if specific performance is feasible.
- xii) The court may adjust procedural rules to ensure substantial justice when no law is violated and fairness between parties is better served.

**4. Supreme Court of Pakistan  
Abdullah @ Ghazali etc. v. The State etc.  
Mr. Justice Jamal Khan Mandokhail, Ms. Justice Musarrat Hilali  
Mr. Justice Malik Shahzad Ahmad Khan**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/crl.p. 260 1 2015.pdf](https://www.supremecourt.gov.pk/downloads_judgements/crl.p. 260 1 2015.pdf)

**Facts:** Trial court had convicted the accused/ petitioners for commission of offences under section 302/396/440/412 PPC read with section 7 of the Anti Terrorism Act, 1997 and section 3/4 of the Explosive Substance, 1908. In appeal the judgment was upheld by the Hon'ble High Court. The august Supreme Court of Pakistan converted the petitions into appeals and acquitted the accused.

**Issues:**

- i) How should the testimony of chance witnesses be evaluated?
- ii) What is the evidentiary value of an identification parade held jointly and not describing role attributed to the accused?

**Analysis:** i) In order to justify their presence at the spot at the odd hours of night i.e. 03:30, AM they stated that on the relevant date and time they were going to Chiniot to purchase a buffalo and on their way when they reached at the Police Post Qudratabad, they witnessed the occurrence and thereafter they proceeded to Chiniot for the above-mentioned purpose. No receipt of the cattle market Chiniot was produced by the above-mentioned eye-witnesses regarding purchase of any buffalo from the said market in order to justify the reason of their presence at the spot on the night of occurrence... The above-mentioned prosecution eye-witnesses have also conceded that during investigation they did not produce any person from Chiniot who was visited by them in order to purchase a buffalo on the relevant day... Reference in this respect may be made to the cases of Mst. Sughra Begum Vs. Qaiser Pervez (2015 SCMR 1142), Mst. Mir Zalai v. Ghazi Khan and others (2020 SCMR 319), G.M. Niaz v. The State (2018 SCMR 506), Muhammad Ali Vs. The State (2015 SCMR 137), Muhammad Irshad vs. Allah Ditta and others(2017 SCMR 142), Sufyan Nawaz and another vs. The State and others (2020 SCMR 192). In the case of "Mst. Sughra Begum" supra, this Court held "A chance witness,

in legal parlance is the one who claims that he was present on the crime spot at the fateful time, albeit, his presence there was a sheer chance as in the ordinary course of business, place of residence and normal course of events, he was not supposed to be present on the spot but a place where he resides, carries on business or runs day to day life affairs. It is in this context that the testimony of chance witness, ordinarily, is not accepted unless justifiable reasons are shown to establish his presence at the crime scene at the relevant time. In normal course the presumption under the law would operate about his absence from the crime spot. True that in rare cases, the testimony of chance witness may be relied upon, provided some convincing explanations appealing to prudent mind for his presence on the crime spot are put forth, when the occurrence took place otherwise, his testimony would fall within the category of suspect evidence and cannot be accepted without a pinch of salt.

(ii) Insofar as identification of the petitioners by the above-mentioned eye-witnesses during identification parades is concerned, we have noted that the identification parade was jointly held. Although the identification parade of Abdul Hayee, petitioner was not jointly held with any other accused but no role whatsoever during the occurrence was attributed to the said petitioner by the prosecution eye-witnesses at the time of his identification parade... therefore, the identification of the petitioners during their identification parades carries no value in the eyes of law.

**Conclusion:** i) If the reason given by chance witnesses for their presence at the spot at the time of occurrence has not been established, it is not safe to rely upon their evidence.  
ii) The identification of the accused during such identification parade carries no value in the eyes of law.

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**5. Supreme Court of Pakistan**  
**Mazhar Ali v. The State and another**  
**(Criminal Petition No. 776 of 2024)**  
**Mr. Justice Jamal Khan Mandokhail, Ms. Justice Musarrat Hilali, Mr. Justice Malik Shahzad Ahmad Khan**  
[https://www.supremecourt.gov.pk/downloads\\_judgements/crl.p. 776 2024.pdf](https://www.supremecourt.gov.pk/downloads_judgements/crl.p. 776 2024.pdf)

**Facts:** Petitioner assailed order passed by the learned Peshawar High Court, Peshawar, with a prayer to set aside the said order and grant post-arrest bail to him in case registered under Sections 302/34/109 PPC.

**Issues:** i) Whether evidentiary value of the prosecution evidence qua identification of the petitioner during identification parade after his nomination in this case requires further probe and inquiry entitling the petitioner to the grant of post arrest bail?  
ii) Whether mere abscondence of an accused by itself is a ground to refuse bail to the accused if otherwise he is entitled to the said relief?

**Analysis:** i) In case of Naveed Sattar vs. The State (2024 SCMR 205) wherein post-arrest bail was granted to the accused in almost identical circumstances while inter alia observing in paragraph No. 5 of the said judgment as under: “The identification

parade was conducted after petitioner's nomination by the complainant and in such circumstances, prima facie the sanctity of such test identification parade is open for determination."

ii) It is true that the petitioner statedly remained an absconder in this case for a period of 10 years but it is by now well settled that mere abscondence of an accused by itself is no ground to refuse bail to him if otherwise he is entitled to the said relief on merits. Reference in this context may be made to the cases of Hidayat Khan Vs. The State (2023 SCMR 172), Ehsanullah Vs. The State (2012 SCMR 1137) and State vs. Mukhtar Ahmad Awan (1991 SCMR 322).

- Conclusion:**
- i) Evidentiary value of the prosecution evidence qua identification of the petitioner during identification parade after his nomination in the case requires further probe and inquiry entitling him to the grant of post arrest bail.
  - ii) Mere abscondence of an accused by itself is no ground to refuse bail to him if otherwise he is entitled to the said relief on merits.

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**6. Lahore High Court**  
**Packages Limited v. Punjab Labour Appellate Tribunal & another**  
**Writ Petition No.28022 of 2023**  
**Mr. Justice Shujaat Ali Khan**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4875.pdf>

**Facts:** Through this writ petition under Article 199 of Constitution of Pakistan 1973, the petitioner has challenged the judgment of Punjab Labour Appellate Tribunal, Lahore; therein, the appeal was accepted and judgment of Labour Court was set-aside.

- Issues:**
- i) what is definition of Workman?
  - ii) Whether the employer can be allowed to blow hot and cold in the same breath?
  - iii) Whether agitation of certain issues could be treated as misconduct under Standing Order 15(3) of the Ordinance 1968?
  - iv) Whether the findings of the Inquiry Officer/Committee cannot be substituted by any forum?
  - v) Whether penalty should be commensurate with gravity of allegation?
  - vi) When the findings of forms are at variance, to which one preference is given?

**Analysis:** i) There is no cavil with the fact that the duties, being performed by a person, are determining factor to adjudge as to whether he/she is a workman or not... section 2(xxxi) of PIRA, 2010, deals with the definition of a worker or a workman, which for facility of reference is reproduced here in-below:-

(xxx) "worker" and "workman" mean a person not falling within the definition of employer who is employed (including employment as a supervisor or as an apprentice) in an establishment or industry for hire or reward either directly or through a contractor whether the terms of employment be express or implied, and, for the purpose of any proceedings under the Act in relation to an industrial dispute includes a person who has

been dismissed, discharged, retrenched, laid-off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off, or removal has led to that dispute but does not include any person who is employed mainly in managerial or administrative capacity.”

According to the afore-quoted definition, only those employees have been excluded from the category of workmen who have been appointed in an establishment in managerial or administrative capacity. Insofar as the case in hand is concerned, the designation of respondent No.2 has been mentioned as Operator in the Show Cause Notice, thus, on the dint of his designation, neither he can be considered as manager or holder of any administrative post.....A cursory glance over the stance taken by the petitioner company in its reply to the Grievance Petition renders it crystal clear that it admitted the status of respondent No.2 as a workman, thus, it cannot be allowed to change its stance before this Court irrespective of the fact as to whether it challenged the findings of the Labour Court whereby he was treated as workman.

ii) An employer cannot be allowed to blow hot and cold in the same breath inasmuch as once the status of a person has been admitted as workman, the same cannot be allowed to be retracted without any change in the nature of his work.

iii) If the contents of the complaint under discussion, followed by the Show Cause Notice, are seen in the light of the aforesaid fact, there leaves no ambiguity that though respondent No.2 agitated certain issues but the same could not be treated as misconduct.....in my humble opinion, none is attracted against him inasmuch as mere an attempt to play a leading role amongst the workers, while discussing issues, cannot be termed as any of the omissions/acts as enumerated above. Likewise, the sarcastically laughing also does not constitute an offence amounting to misconduct.

iv) While addressing the Court, learned counsel for the petitioner-company took specific plea that the findings of the Inquiry Officer/Committee cannot be substituted by any forum including this Court. I am in agreement with the learned counsel for the petitioner-company that in ordinary course the findings of the Inquiry Officer/Committee cannot be substituted but when the same are not based on true appraisal of the material on record the same cannot be considered sacrosanct rather in such eventuality no forum should feel shy to take care of such omission or commission.

v) Instead of choice of the competent authority it is requirement of law that penalty should commensurate with gravity of allegation. Reliance in this regard is placed on the cases reported as *The Postmaster General Sindh Province, Karachi and others v. Syed Farhan* (2022 SCMR 1154), *Secretary to Government of the Punjab, Food Department, Lahore and another* (2007 PLC (C.S.) 692) and *Government of Punjab v. Shahid Mehmood Butt* (2006 SCMR 443).

vi) Admittedly, the findings of the fora below are at variance and in such eventuality preference is to be given to the verdict of the appellate forum until and unless the same is found to be perverse or arbitrary which is not the position in case in hand. Reliance in this regard is placed on the case reported as *Hakim ud-Din through L.Rs and others v. Faiz Bakhsh and others* (2007 SCMR 870).

- Conclusion:**
- i) See the above Para No.i
  - ii) An employer cannot be allowed to blow hot and cold in the same breath inasmuch as once the status of a person has been admitted as workman
  - iii) The agitation of certain issues cannot be termed as any of the omissions/acts to constitute misconduct.
  - iv) The findings of the Inquiry Officer/Committee cannot be substituted unless the same are not based on true appraisal of the material on record.
  - v) It is requirement of law that penalty should commensurate with gravity of allegation.
  - vi) When the findings are at variance and in such eventuality preference is to be given to the verdict of the appellate forum until and unless the same is found to be perverse or arbitrary.

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**7. Lahore High Court**  
**Nisar Ahmad vs. Inspector General of Police, etc.**  
**Writ Petition No. 53726/2019.**  
**Mr. Justice Shujaat Ali Khan.**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4861.pdf>

**Facts:** In pursuant to advertisement got published by the Commandant Punjab Constabulary, in Daily Nawa-e-Waqt, the petitioner being Ex-Army man, applied against the post of Head Constable, and was selected against the aforesaid post, on contract basis for a period of five years, *vide* Appointment Order, dated 23.12.2006. Upon completion of satisfactory service, the contract period of the petitioner remained extended from time to time. In the year 2013, Government of the Punjab introduced a policy regarding regularization of contract employees. Thereafter, services of the petitioner were terminated *vide* order, dated 24.12.2014 against which he, alongwith others, filed Writ Petition before Hon'ble High Court which was decided through order, dated 15.05.2015, directing the department to consider his case for regularization within sixty days. Pursuant to aforesaid order, the department took up cases of 1449 police personnel and reinstated only 20 out of them. Being dissatisfied with the exclusion of his name from amongst the list of reinstated employees, the petitioner filed Writ Petition No.4856/2016 which was disposed of through order, dated 16.04.2018, with the direction to the department for decision of the matter relating to regularization of the petitioner through Scrutiny Committee. Pursuant to order, dated 16.04.2018, passed by this Court in Writ Petition (No.4856/2016), the competent authority took up the case of the petitioner and rejected his request for reinstatement and regularization *vide* order, dated 07.09.2019; hence, this petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution").

**Issues:**

- i) On which ranks direct recruitment in police department is permissible under Article 7 of Police Order 2002 and whether the same is meant for direct recruitment on the post of Head Constable?

- ii) Whether according to Rule 12.1 Chapter XII of Police Rules, 1934, post of Head Constable can be filled in directly?
- iii) What is procedure of appointment of Head constable in police department?
- iv) Whether Rule 12.10 of Police Rules, 1934 has precedence over Rule 12.1 of Police Rules, 1934?
- v) In whose favor extraordinary constitutional jurisdiction, vested in this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, can be used?

**Analysis:**

- i) According to Sub-Section 3 *supra*, direct recruitment in police department, other than ministerial and specialist cadres, can be made against the ranks of Constable, Assistant Sub-Inspector and Assistant Superintendent of Police and there is no mention of the post of Head Constable in the said provision, meaning thereby that the post of Head Constable is not meant for direct recruitment.
- ii) Now taking up the plea of the learned counsel for the petitioner that according to Rule 12.1 Chapter XII of Police Rules, 1934, post of Head Constable can be filled in directly, I am of the view that though the referred rules deal with different categories of employees in the police, alongwith corresponding competent authority but the same does not enshrine that direct recruitment against the post of Head Constable is permissible.
- iii) According to rule 12.10 of Police Rules, 1934 Chapter XII, Head Constables are to be appointed by promotion from selection grade constables.
- iv) Moreover, rule 12.10 *ibid* being latter in time, enjoys precedence over the rule being referred by the learned counsel for the petitioner.
- v) It is well entrenched by now that extraordinary constitutional jurisdiction, vested in this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, can be used in favour of a person, whose right is being withheld by the executive despite the fact that same has been established under the relevant law.

**Conclusion:**

- i) See above analysis No. i).
- ii) Post of Head Constable cannot be filled in directly Rule 12.1 Chapter XII of Police Rules, 1934.
- iii) According to rule 12.10 of Police Rules, 1934 Chapter XII, Head Constables are to be appointed by promotion from selection grade constables.
- iv) Rule 12.10 has precedence over Rule 12.1 Chapter XII of Police Rules, 1934
- v) Extraordinary constitutional jurisdiction can be used in favour of a person, whose right is being withheld by the executive.

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**8. Lahore High Court**  
**Muhammad Ismail & others v. Allah Wasaya & others**  
**Civil Revision No.893 of 2017**  
**Mr. Justice Shujaat Ali Khan**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4895.pdf>

**Facts:** Predecessor-in-interest of the respondents No.1 to 3 and respondent No.4 filed suit against legal heirs of their brother, seeking declaration to the effect that Gift

Mutation No.708 (suit mutation), in respect of property measuring 42-Kanals & 14-Marlas, was result of forgery and fraud, thus, was liable to be cancelled and inconsequential upon their rights. The said suit was contested by the present petitioners by filing contesting written statements inter-alia with the averments that as a matter of fact, the land, subject matter of the mutation, was transferred in their names as a result of sale thus the same was not open to attack. The learned Trial Court dismissed the suit, against which the respondents filed an appeal which was accepted by the learned Additional District Judge; hence this petition.

- Issues:**
- i) Does non-framing of critical issues, invalidate judicial proceedings?
  - ii) Are appellate courts required to address improperly framed issues from the trial court?
  - iii) Can a court decide the main case without resolving pending miscellaneous applications?
  - iv) Is it permissible to proceed with a case without deciding on an expert opinion application regarding disputed documents?
  - v) What are the requirements for proving transactions executed before the Qanoon-e-Shahadat Order, 1984, and under what conditions is secondary evidence admissible?

- Analysis:**
- i) Order XIV CPC casts heavy duty upon the court to firstly determine points of dispute between the parties and then to move for recording their evidence... It cannot be believed that the party concerned was aware about the exact nature of the dispute regarding which he had to lead evidence.
  - ii) The appeal being the continuation of the original suit, the learned Appellate Court enjoys the same powers as that of the trial court and if the respondents themselves agitated that the Issues were not properly framed, the learned Appellate Court was supposed to take the said point seriously but... the said point has even not been touched.
  - iii) It is well established by now that prior to deciding the main lis, a court or forum is bound to decide the miscellaneous application(s)... it becomes crystal clear that the same cannot be condoned merely on the ground that the matter has been decided in view of the pleadings of the parties.
  - iv) It is optional for the Court either to accede to the request of a party for expert opinion in a matter or not, but the said discretion cannot be used to permit a forum to decide the main case without taking decision on the miscellaneous application.
  - v) A transaction executed prior to promulgation of the Qanoon-e-Shahadat Order, 1984 is not required to be proved under the provisions of the said Order rather the same is to be proved in terms of the Evidence Act, 1872 and that the petitioners could only be allowed to produce secondary evidence in the event they proved the death of the marginal witnesses by producing their death certificates.

- Conclusion:**
- i) See above analysis No. i
  - ii) Learned Appellate Court enjoys the same powers as that of the trial court.
  - iii) Prior to deciding the main lis, a court or forum is bound to decide the

- miscellaneous application(s).  
 iv) See above analysis No. iv  
 v) See above analysis No. v

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**9. Lahore High Court**  
**Muhammad Qasim v. Registrar of Trade Marks etc.**  
**Mr. Justice Abid Aziz Sheikh**  
**Case No: FAO No.433/2014**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4823.pdf>

- Facts:** The appellant, proprietors of a registered trademark since 2005, filed suits for a permanent injunction and damages against the respondents for alleged infringement and losses caused by the respondent's sales. During these proceedings, another individual sought revocation and rectification of the trademark before the Trade Marks Registrar, who allowed this request ex parte in June 2014. Following this decision, the respondents filed applications for rejection of the suits, which were granted by the court, citing the revocation of the trademark. The appellant then filed appeals challenging both the Registrar's and the court's orders.
- Issues:**
- i) Where trademark revocation, invalidation, or rectification applications under Trade Mark Ordinance, 2001 go, if proceedings are already pending?
  - ii) Why to avoid fragmented Intellectual property claims?
  - iii) How term 'proceedings' can be elaborated?
  - iv) What jurisdiction do Intellectual Property Tribunals have under the Intellectual Property Organization of Pakistan Act, 2012?
- Analysis:**
- i) Under sections 73(4), 80(4) and 96(2) of the Ordinance, if the proceedings concerning the Trade Mark in question are pending in High Court or District Court, the application shall be made to the said Court for revocation, invalidation or rectification. In case the application is made to the Registrar, he may at any stage of the proceedings refer the application to the said Court.
  - ii) The legislative intent emanating from the above provisions is that there ought not be piecemeal adjudication of intellectual property claims in relation to the same trade mark. The purpose is to avoid conflicting decisions and to encourage consistency of views on proceedings concerning the trade mark in question.
  - iii) The term "proceedings" has been elaborated by the Supreme Court in The State through Advocate General, N.W.F.P., Peshawar vs. Naeemullah Khan (2001 SCMR 1461) as under:- (...) "the word 'proceedings' is a comprehensive expression which includes every step taken towards further progress of a cause in Court or Tribunal, from its commencement till its disposal. In legal terminology the word "proceedings" means the instituting or carrying on of an action of law. Generally, a 'proceedings' is the form and manner of conducting judicial business before a Court or judicial officer, including all possible steps in an action from its commencement to the execution of a judgment (...) It in its general use comprehends every step taken or measure adopted in prosecution or defence of an



action.”

iv) It is relevant to note that presently the matters relating to intellectual property rights are governed under the Act of 2012. The purpose of said Act of 2012 as per its preamble is to provide institutional arrangement for taking up exclusively and comprehensively all steps and matters regarding the intellectual property rights in integrated manner. Section 2(h) of the Act of 2012 defines the intellectual property laws as the laws specified in the schedule to the Act of 2012 which include the Ordinance. Section 16 of the Act of 2012 provides for creation of Intellectual Property Tribunals and under section 17 and 18 of the Act of 2012, the Tribunals will have exclusive jurisdiction in respect of matters under which the jurisdiction of the Tribunal extends under the Act of 2012.

**Conclusion:** i) To Centralize trademark decisions.  
ii) Ensure consistency, avoid conflicts.  
iii) See above analysis No. iii.  
iv) See analysis No. iv.

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**10. Lahore High Court**  
**The State v. Khawaja Muhammad Tayyab**  
**Murder Reference No.29 of 2023**  
**Khawaja Muhammad Tayyab v. The State etc.**  
**Criminal Appeal No.330 of 2023**  
**Mr. Justice Sadaqat Ali Khan, Mr. Justice Mirza Viqas Rauf**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC5059.pdf>

**Facts:** Appellant tried and convicted by trial court for murder. Trial court sent murder reference for confirmation and appeal against conviction by appellant.

**Issues:** i) What is the legal effect of contradictions and implausibility in the testimonies of eyewitnesses on the outcome of a criminal case?  
ii) How does the absence of independent corroborative evidence affect the prosecution’s case?  
iii) What is the legal standard for giving the benefit of doubt in criminal cases?  
iv) How should courts view recovery evidence when a key witness to the recovery does not support the prosecution's claim?

**Analysis:** i) These contradictions are not ignorable, rather shatter the credibility of the eyewitnesses creating doubt regarding their presence at the time of occurrence at the place of occurrence and also negate the whole story of the prosecution.  
ii) Rough and scaled site plans of the place of occurrence show the presence of the deceased at point (1) which is almost adjacent to the houses of Haji Khalid Rehman and Muhammad Hashim, who have not been produced in support of the story of prosecution.  
iii) It is settled principle of law that for giving benefit of doubt, it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in the prudent mind about the guilt of the accused,

then he would be entitled to its benefit not as a matter of grace or concession, but as of right.

iv) Nasir Waseem, SI PW-11 stated in his statement before the trial Court that on 15.07.2022, appellant during interrogation disclosed and got recovered pistol from his house in presence of Tariq ShahzadPW-7 and Aamer Shehzad, who has not been produced in support of this recovery whereas Tariq ShahzadPW-7 while appearing before the trial Court did not utter even a single word regarding this recovery which is not believable.

- Conclusion:**
- i) Such contradictions negate the whole story of the prosecution.
  - ii) See above analysis at (ii).
  - iii) If there is a circumstance which creates reasonable doubt in the prudent mind about the guilt of the accused, then he would be entitled to its benefit not as a matter of grace or concession, but as of right.
  - iv) Such recovery is not believable.

**11. Lahore High Court**  
**The State v. Zeeshan Ali**  
**Murder Reference No. 30 of 2023**  
**Zeeshan Ali v. The State etc.**  
**Criminal Appeal No 304 of 2023**  
**Mr Justice Sadaqat Ali Khan, Mr Justice Mirza Viqas Rauf.**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC5065.pdf>

**Facts:** After sustaining firearm injuries, injured was transported to the hospital immediately, where her condition was mentioned to be stable and oriented at the time of her statement. She during her statement in the hospital, identified the accused and disclosed that her brother in law/ accused had shot her during an altercation. Despite medical treatment, she could not survive and died after two days of the occurrence; her statement was treated as a dying declaration. The trial was conducted and the accused was convicted under section 302 (b) of PPC and was sentenced to death as Tazir alongwith compensation etc. Appellant filed an appeal against the said conviction; where as the trial court sent the murder reference for confirmation of death sentence, which were decided.

**Issues:**

- i) Whether minor discrepancies in statements of witnesses recorded after a long time time of occurrence are not fatal to the prosecution's case?
- ii) What was the sanctity of such a dying declaration of the deceased which is made soon after the occurrence, in which she implicated the accused?
- iii) Should each criminal case be decided on its unique facts and circumstances rather than applying a uniform standard?
- iv) Does the hostility of the prosecution eyewitness who is related to the accused, weaken the prosecution's case if other evidence sufficiently establishes the accused's guilt?

**Analysis:** i) The discrepancies in the statements of the PWs pointed out by learned counsel

for the appellant, are minors and general in nature, occur in every case when witnesses (who are human-beings) are cross-examined after a long time of the occurrence as in present case and are not fatal to the prosecution case.

ii) Deceased has fully implicated the appellant which has a great weight and sanctity under the law which was made soon after the occurrence excluding the chances of consultation and deliberation... It was a day light occurrence... having this close relationship inter-se the parties, there is no question of misidentity of the appellant leaving the actual culprit scot free.

iii) It is settled principle of law that each criminal case is to be decided having regard to its own peculiar facts and circumstances. A test to be essentially applied in one case may absolutely be irrelevant in another case as the crimes are seldom committed in identical situations.

iv) Although in the instant case, deceased herself cited... (her brother-in-law “دیور”) as an eyewitness of the occurrence yet he while appearing before the trial Court as PW-13 has become hostile under brotherly love bonding, he has favoured his brother (appellant), husband of ...(deceased, the then injured), being brother of the appellant also remained mum in this respect, which is not fatal to the prosecution case.

- Conclusion:**
- i) See above analysis No i.
  - ii) There is no question of mis identity.
  - iii) Each criminal case is to be decided having regard to its own peculiar facts and circumstances.
  - iv) See above analysis No iv.

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**12. Lahore High Court**  
**Jadeed feeds industries (pvt.) Limited**  
**Vs. Board of revenue, punjab and others**  
**Writ Petition No.3455 of 2023**  
**Mr. Justice Mirza Viqas Rauf**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4916.pdf>

- Facts:** The "Petitioner-Company", alongwith two other companies namely Jadeed Farms (Pvt) Limited and Jadeed GP Farms (Pvt) Limited, was initially incorporated in different times under the erstwhile Companies Ordinance, 1984 (hereinafter referred to as "Ordinance, 1984") with the Securities Exchange Commission of Pakistan (hereinafter referred to as "S.E.C.P."). All the three companies proposed Scheme of Arrangement in terms of Sections 279 to 282 and 285 of the "Act, 2017". By virtue of said Scheme of Arrangement, the entire undertaking comprising of all the assets, liabilities and obligations of latter two companies shall, as of the effective date, stand merged with, transferred to, vested in, and be assumed by the "Petitioner-Company". The Scheme of Arrangement was duly approved by the Board of Directors of all the three companies and ultimately shareholders/members of all the three companies unanimously approved the Scheme of Arrangement in their Extra-Ordinary General Meeting (hereinafter referred to as "E.O.G.M.") held on 17<sup>th</sup> December, 2019. This followed a joint merger application before this court

bearing No.C.O.No.01/2020 which was allowed vide order dated 29<sup>th</sup> June, 2020. Feeling aggrieved from sub-para 'n' of the Scheme of Management, all the three companies filed R.A.No.01/2020, which was allowed vide order dated 02<sup>nd</sup> February, 2021 with a modification in original order. The grievance of the "Petitioner-Company" is that though in pursuance to said order it approached "S.E.C.P.", Islamabad, who de-incorporated aforementioned two companies and issued afresh incorporation certificate containing the enhanced paid-up capital/shareholding including all the assets/properties, liabilities and obligations in favour of the "Petitioner-Company" but when it approached the revenue officers of different Districts for incorporation of name of "Petitioner-Company" in the revenue record, some of them though acceded but others refused to entertain the request on the ground that respondent No. I issued letter dated 13.04.2023, restraining them not to transfer the assets of the companies without payment of stamp duty/mutation fee etc; at the time of mutation or registration of merger.

**Issues:** Whether in case of merger of two or more companies into one, any stamp duty can be levied/claimed for incorporation of mutation in the revenue record in favour of such company?

**Analysis:** So far as contention of learned counsel for the "Petitioner-Company" that by virtue of Sub-Section (5) of Section 282 of the "Act, 2017", no stamp duty is payable despite the provisions contained in the "Act, 1899"; suffice to observe that prior to the "Act, 2017", there was "Ordinance, 1984" but it was repealed through Section 509 of the "Act, 2017". It is however noticed that provisions of Section 279 of the "Act, 2017", which deals with compromise with creditors and members, are identical and pari materia with Section 284 of the "Ordinance, 1984" so is the case of Section 282 of the "Act, 2017" and Section 287 of the "Ordinance, 1984". This, thus, leaves no cavil to hold that the order sanctioning the merger of the company is an "instrument" for all intent and purposes in the light of the "Act, 1899" and the principles laid down in Fatima Sugar Case (Supra) are equally applicable to the order of the merger passed under the "Act, 2017"..... . So far as claim of the "Petitioner-Company" that through Scheme of Management, a merger has taken place, which does not amount to transfer of any right or title and it is only change of name of the company in the relevant record; suffice to observe that Section 12 of the "Act, 2017" specifically deals with the issue of change of name by a company and the case of the "Petitioner-Company" is clearly beyond the scope of said provision. Needless to reiterate that through merger, assets and liabilities of the companies previously existing, stands transferred in the name of the 'Petitioner-Company' and as such, it clearly falls within the ambit of Article 27-A, Schedule-I of the "Act, 1899".

**Conclusion:** Yes, In case of merger of two or more companies into one, stamp duty can be levied/claimed for incorporation of mutation in the revenue record in favour of such company.

**13. Lahore High Court**  
**Ch. Muhammad Abdul Saleem (deceased) represented**  
**by legal heirs v. Mst. Aziza Khatoon (deceased)**  
**represented by legal heirs, etc.**  
**Mr. Justice Ch. Muhammad Iqbal**  
**R.S.A No.69/2006**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4723.pdf>

**Facts:** This appeal challenges a 2006 decision by the District Judge, which overturned an earlier 1996 judgment and granted possession of a disputed plot. The case involves a plot allegedly purchased through an auction in the 1960s by predecessor of the respondents, with ownership contested due to claims of a forged transfer order from the 1970s. The dispute escalated through various hearings and appeals, with the current appeal seeking to reverse the decision granting possession to the respondents.

**Issues:**

- i) What document is needed to rebut another?
- ii) Can the Settlement Department reallocate a plot after a PTD issuance without canceling the original allotment?
- iii) Does fraud invalidate all proceedings and gains obtained through it?
- iv) Should appellate court findings take precedence in case of conflicting judgments?

**Analysis:**

- i) It is settled law that a document can be rebutted by a document having better legal sanctity only.
- ii) After issuance of PTD, plot was not available in pool of the Settlement Department as such the Settlement Authorities were precluded to make any further allotment until and unless the earlier allotment was reversed and instrument of title were cancelled.
- iii) it is settled law that fraud vitiates the most solemn proceedings and any edifice so raised on the basis of such fraudulent transaction, that stand automatically dismantled and any ill-gotten gain achieved by fraudster cannot be validated under any norms of laws.
- iv) It is well settled law that in the event of conflict of judgments, findings of appellate Court are to be preferred and respected, unless it is shown from the record that such findings are not supported by evidence.

**Conclusion:**

- i) Only a better legal sanctity document can rebut another.
- ii) Once a PTD is issued, the plot cannot be reallocated unless the original allotment is canceled.
- iii) Fraud nullifies all proceedings and any benefits gained from it.
- iv) Appellate court findings take precedence in conflicts, unless unsupported by evidence.

**14. Lahore High Court**  
**Kaniz Haider etc. v. Khaliq Dad etc.**  
**W.P.No.80553/2023**  
**Mr. Justice Ch. Muhammad Iqbal**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC5013.pdf>

**Facts:** Petitioners being widow and sister of issueless deceased persons inherited their estate. Respondents/ paternal cousins of deceased persons challenged inherited mutations before Revenue Authority on the ground that being residuary they would also inherit from the estate of the deceased; they succeed to inherit the share from estate of deceased being residuary. The issues of sanctioning of inheritance mutation of issueless deceased were consolidated at the level of higher forum of revenue hierarchy and the Member, Board of Revenue, Punjab dismissed the aforesaid four revision petitions of petitioners. Hence, these writ petitions.

**Issue:**

- i) Whether real paternal cousins of issueless deceased Muslims would inherit from their estate as residuaries or otherwise?
- ii) What are the classifications of heirs under Islamic inheritance law?
- iii) What is the principle of "Return (Radd)" in Islamic inheritance law?
- iv) How does the Constitution of Pakistan align the country's laws with Islamic injunctions?
- v) What is the legal status of a sister as an heir in the absence of male sharers?

**Analysis:**

- i) The Islamic principles are very clear on the instant issue that in case of death of an issueless Muslim with no male sharer alive, his/her sister(s) would inherit as Sharer whereas the residue would be devolved upon available Residuaries. In the instant case, as Muhammad Asghar and Nasreen Akhtar had died issueless and left no male sharer alive as such the respondents being paternal uncle's sons would inherit from the respective estates of Muhammad Asghar and Nasreen Akhtar after satisfaction of the shares of the sharers.
- ii) There are three classes of heirs, namely, (1) Sharers, (2) Residuaries, and (3) Distant Kindred:
  - (1) 'Sharers' are those who are entitled to a prescribed share of the inheritance;
  - (2) 'Residuaries' are those who take no prescribed share but succeed to the 'residue' after the claim of the sharers are satisfied;
  - (3) 'Distant Kindred' are all those relations by blood who are neither Sharers nor Residuaries.
- iii) If there is a residue left after satisfying the claims of Sharers, but there is no Residuary, the residue reverts to the Sharers in proportion to their shares. This right of reverter is technically called 'Return' or Radd.
- iv) As per Article 227 of the Constitution, the principles of Holy 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 Quranic principles. For reference, Article 227 of the Constitution is reproduced as under:

‘All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, and no law shall be enacted which is repugnant to such injunctions.

v) In the present case, the propositus died without leaving child, child of a son, father, grandfather, brother or consanguine brother, hence the petitioner as a sister had to inherit being sharer. Although there might be eventuality when status of a sister being sharer may also be converted into residuary, but condition precedent for that capacity would be either she has a brother or in his default there be (a) a daughter or daughters or (b) son’s daughters h.l.s. or even if there be (c) one daughter and a son’s daughter or daughter h.l.s.

- Conclusion:**
- i) See Analysis No. i
  - ii) See Analysis No. ii
  - iii) See Analysis No. iii
  - iv) As per Article 227 of the Constitution, the principles of Holy Quran and Sunnah are admitted as supreme law of this country.
  - v) See Analysis No. v

**15. Lahore High Court**  
**Muhammad Zahid Atta v. Lahore Development Authority (“LDA”) through**  
**Director General & others**  
**Writ Petition No.14605 of 2022**  
**Mr Justice Muhammad Sajid Mehmood Sethi**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4935.pdf>

**Facts:** In these consolidated cases, the petitioners challenge dismissal orders imposed for alleged misconduct and corruption. After a previous court order, their appeals were reviewed and rejected. They now seek reinstatement with back benefits, and one petitioner also requests pension benefits due to reaching superannuation.

**Issues:**

- i) Is the competent authority required to provide notice and a reasoned order when deviating from the Inquiry Officer’s recommended penalty?
- ii) Does the court only intervene when the penalty imposed by the competent authority is found to be unlawful or disproportionate?
- iii) Should the penalty imposed be both suitable and necessary, ensuring it is proportionate to the proven misconduct?

**Analysis:**

i) There is no cavil to the proposition that the competent authority is not bound by the recommendations of Inquiry Officer qua the award of penalty to the accused officer / official. However, if the competent authority intends to deviate from those recommendations, it must adhere to certain procedural safeguards. Firstly, the competent authority is required to give mandatory notice to the accused officer / official qua enhancement in punishment recommended by the Inquiry Officer affording him an opportunity to defend his position and to plead his case against enhancement of penalty; and secondly, the competent authority has to pass a reasoned order for disagreeing with the recommendations of the Inquiry Officer

demonstrating a conscious application of mind,

ii) Needless to say that the imposition of punishment under the law is primarily the function and prerogative of the competent authority and the role of the Court is secondary, which comes into play only when the imposed penalty is found to be unlawful or unreasonable. Reasonableness for the purposes of assessing the quantum or nature of a penalty imposed by the department is to be gauged by applying the test of proportionality.

iii) It was also observed that a more sophisticated version of proportionality provided for a structured test, whereby it will firstly be assessed whether the measure taken is suitable in attaining the identified ends (the test of suitability, which includes the notion of "rational connection" between the means and ends) and then whether the measure is necessary or if a less restrictive or onerous method could have been adopted (the test of necessity). In essence, an administrative decision must not be more drastic than necessary and therefore, it follows that the penalty imposed must be commensurate with the misconduct or inefficiency that has been proved.

- Conclusion:**
- i) The competent authority must give notice and a reasoned order to impose a harsher penalty than the Inquiry Officer recommends.
  - ii) The court intervenes only if the penalty is unlawful or disproportionate.
  - iii) The penalty must be suitable, necessary, and proportionate to the misconduct.

**16. Lahore High Court**  
**National Highway Authority through its Chairman V.**  
**Mubashar Hussain Awan & others**  
**Mr. Justice Muhammad Sajid Mahmood Sethi**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4940.pdf>

**Facts:** National Highway Authority, appellant, challenged order/ decree through which application under section 18 of the Land Acquisition Act, 1894 was allowed by Senior Civil Judge.

**Issues:** i) What is the appropriate standard for determining fair and just compensation of land acquired under the Land Acquisition Act, 1894?

**Analysis:** i) Record shows that the Award (Exh.A2) though mentions that objections were filed by respondents / landowners, however no reasons are forthcoming therefrom which prevailed upon LAC to reject the objections...It is pertinent to mention here that the award is based upon value assessed by the District Price Assessment Committee (which was approved by Board of Revenue), however, as per information provided by the respondents themselves, which fact is mentioned in the Award (Exh.A2) dated 16.06.2017, the field staff had proposed the following amounts of compensation.. It is the stance of appellant-NHA that the value assessed by the Referee Court is on higher side. The Referee Court has neither taken into consideration the market value of the land nor the report of field staff. Evidence brought on record by the parties is to be seen in its entirety, stressing less qua the



obligation of the onus to prove, and applying the principle of preponderance of evidence.... The Referee Court has not properly appreciated the material / evidence brought on record, including the report mentioned supra, facts of the case, applicable law and dictum laid down by the superior Courts while passing the impugned decision.

**Conclusion:** It is to be determined keeping in view the complexion and character of the acquired land.

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**17. Lahore High Court**  
**Human Rights Commission of Pakistan and another v. Government of the Punjab and others**  
**Writ Petitions No. 10511/2020, 78009/2019, 73369/2019 and 75529/2019**  
**Mr. Justice Tariq Saleem Sheikh**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4742.pdf>

**Facts:** The petitions arose from allegations of abuse, neglect, and mismanagement in shelter homes across Punjab. Key issues revolved around the operational inadequacies, lack of oversight, and legal frameworks governing these institutions. Different questions regarding regulations of various shelter homes and protection facilities for women and children in Punjab were raised. The Chief Minister's Inspection Team highlighted severe administrative and financial irregularities, lack of proper SOPs, and inadequate welfare measures for women and children in these shelter Homes.

**Issues:**

- i) How does Article 25 of the Universal Declaration of Human Rights (UDHR) contribute to the recognition and protection of the right to adequate housing?
- ii) In what ways does CEDAW address the need for States to ensure the protection and support of women who are victims of violence?
- iii) Other conventions and declarations that complement CEDAW in addressing discrimination and violence.
- iv) What measures does the Beijing Platform's Strategic Objective D.1 recommend for preventing and addressing violence against women, particularly regarding shelters and support services?
- v) What guidelines are provided by the United Nations Special Rapporteur on Adequate Housing with regard to specific implementation measures for States, public authorities, and regional and local governments?
- vi) What rights and protections does the United Nations Convention on the Rights of the Child (UNCRC) provide to ensure the well-being of children?
- vii) How do the ICESCR address the rights to an adequate standard of living and protection against exploitation and trafficking?
- viii) What protections does ILO Convention provide to safeguard children from child labor?
- ix) How do the United Nations Guidelines for the Alternative Care of Children address the needs of children requiring alternative care?
- x) What constitutional provisions in the Constitution of Pakistan, 1973 support the

interpretation of housing as a fundamental right?

xi) What is the scope and application of the doctrine of *parens patriae* in support for vulnerable populations?

xii) What are the primary legal and administrative frameworks governing shelter homes and protection centers for women in Punjab?

xiii) Which law directly deals with the establishment and administration of Protection Centres and shelter homes in Punjab?

xiv) What is the mandate of the Punjab Women Protection Authority Act, 2017 and which body is constituted under the same Act?

xv) What authority is exercised by the Punjab Women Protection Authority (PWPA) whether such empowerment take precedence over departmental guidelines?

xvi) What monitoring mechanisms and measures are mandated under the Punjab Protection of Women against Violence Act 2016?

xvii) What monitoring mechanisms and measures are mandated under the Punjab Women Protection Authority Act 2017?

xviii) What are the key guidelines developed by the Social Welfare Department for the administration, functioning, and oversight of Dar-ul-Amans/shelter homes in Punjab?

xix) What measures can be adopted for the effectiveness of Protection centres and Shelter Homes?

xx) What are the legal consequences and penalties provided under Pakistan Penal Code for the offence of forced marriage?

xxi) How does the Constitution of Pakistan define and regulate the executive authority of provincial governments also explain the criteria in matters where Federal Parliament and Provincial Assembly have legislative powers?

xxii) How do the Punjab Government Rules of Business 2011, framed under Article 139(3), organize and regulate the internal workings of the government?

xxiii) What are the responsibilities of the Social Welfare Department under the Second Schedule of the Punjab Rules of Business?

xxiv) What are the functions of National Commission on the Rights of Child Act, 2017?

xxv) How do the roles and functions of the National Commission on the Rights of the Child (NCRC) and the National Commission for Child Welfare and Development (NCCWD) complement each other in protecting child rights and fulfilling international obligations?

xxvi) Provincial legislations for the protection of children.

xxvii) How does the Vagrancy Ordinance addresses the protection and welfare of children and under what rules its administration is governed?

xxviii) What are the key responsibilities and powers of the Child Protection and Welfare Bureau (CPWB) under the Punjab Destitute and Neglected Children Act 2004 in protecting and managing the welfare of children under eighteen?

xxix) What limitations does Section 20 of the Punjab Destitute and Neglected Children Act impose on the CPWB's authority to oversee organizations?

- xxx) Under what circumstances can a High Court direct the Executive to initiate legislative measures, as distinguished from directing the legislature to legislate?
- xxxi) What is the concept of continuing mandamus?

- Analysis:**
- i) The Universal Declaration of Human Rights (UDHR) is central to this framework, which articulates the right to an adequate standard of living, including housing, under Article 25. This foundational document underscores the inherent dignity and equality of all individuals, laying the groundwork for subsequent treaties and declarations that specifically address gender-based discrimination and violence.
  - ii) The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted in 1979, is one of the most significant instruments in this regard. CEDAW mandates that States eliminate discrimination against women and ensure their access to rights in various spheres of life. It calls for the provision of shelters and support services to women who are victims of violence, emphasizing the importance of creating safe environments where women can seek refuge and support.
  - iii) Similar protections exist under the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of Persons with Disabilities, and the Beijing Declaration and Platform for Action of 1995, to which Pakistan is a signatory.
  - iv) The Beijing Platform serves as a comprehensive global policy framework for gender equality and the fundamental rights of women and girls. Strategic Objective D.1. of the Declaration calls for integrating measures to prevent and eliminate violence against women. Paragraph 125(a) of Objective D.1 specifically recommends that States provide “well-funded shelters and relief support for girls and women subjected to violence, as well as medical, psychological, and other counseling services and free or low-cost legal aid where needed, as well as appropriate assistance to enable them to find a means of subsistence.”
  - v) First guideline recognizes the right to adequate housing as “integral to core human rights values such as dignity, equality, inclusion, well-being, security of the person and public participation” and calls on States to “guarantee the right to housing as a fundamental human right linked to dignity and the right to life”. Guideline 9 calls for ensuring gender equality in housing and land by recognizing it “as a central component of women’s right to substantive equality”. The guidelines recognize domestic violence as one of the leading causes of homelessness for women and that the “lack of alternative housing options for women experiencing violence in the home places their security and lives at risk”. It calls for reforming laws, policies, and practices so they “alleviate the systemic disadvantages that women experience.” Furthermore, the guideline also calls for the provision of emergency shelters and prompt access to front-line crisis services to those women who face household violence.
  - vi) Under the UNCRC, children are entitled to special protection and assistance to ensure their physical, mental, and social well-being. This includes the right to adequate housing and shelter, as articulated in Article 27, which calls on States

Parties to ensure that every child has the right to a standard of living adequate for their physical, mental, spiritual, moral, and social development. Moreover, the UNCRC mandates States to protect children from all forms of abuse, neglect, exploitation, and violence and to take measures to prevent such occurrences. Article 19 specifically addresses protection from violence, including physical and mental violence, injury, abuse, and neglect.

vii) The International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognizes the right of everyone, including children, to an adequate standard of living, which encompasses housing, and the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, which enhances protection against exploitation and trafficking.

viii) International Labour Organization (ILO) Convention No. 182 on the Worst Forms of Child Labour underscores protections needed for children's well-being, including shelter and protection from hazardous conditions.

ix) The United Nations Guidelines for the Alternative Care of Children emphasize the importance of family and community-based care and provide principles for the protection and well-being of children who are in alternative care settings.

x) The right to housing, though not expressly mentioned in the Constitution as a fundamental right, can be inferred from Article 9 (right to life and liberty), Article 14 (right to dignity), and Article 25 (right to equality).

xi) Here, the doctrine of *parens patriae* comes into play, which refers to the State's role as a guardian for those who are unable to care for themselves. Under this doctrine, the State assumes a protective role, providing housing, essential care and support systems tailored to the specific needs of these vulnerable populations.

xii) The following are the primary laws/rules that deal with shelter homes and protection centres for women in Punjab:

i) Punjab Government Rules of Business, 2011;

ii) The Punjab Protection of Women Against Violence Act, 2016; and

iii) The Punjab Women Protection Authority Act, 2017.

xiii) In 2016, the Punjab Assembly enacted the Punjab Protection of Women against Violence Act, 2016 (the "Women Protection Act"), which was subsequently amended in 2022. This is the only law directly dealing with establishing and administering Protection Centres<sup>20</sup> and shelter homes in the province. Under Section 13 of the said Act, Protection Centres and shelter homes were to be set up in each district in Punjab.

xiv) The Punjab Assembly also enacted the Punjab Women Protection Authority Act, 2017 for the provision of a comprehensive, efficient, effective, and gender-equitable system for the protection, relief, and rehabilitation of women against all forms of violence in the Punjab; to control, monitor, and oversee that system; and to deal with matters ancillary thereto. The said Act establishes the Punjab Women Protection Authority (the "PWPA"), an autonomous statutory and corporate body.

xv) The PWPA is empowered to issue SOPs, guidelines, and instructions to Protection Centres and shelter homes, which will take precedence over any conflicting SOPs or guidelines issued by the department.

xvi) Section 3 of the Women Protection Act mandates the Government to take several measures for its implementation, including establishing a universal toll-free number, setting up Protection Centres and shelter homes, appointing necessary staff, raising public awareness of the Act, and creating a database for monitoring and evaluation... Section 11 requires the Government to establish a District Women Protection Committee in each district... Section 13 mandates the establishment of Protection Centres... Section 14(1) obligates the Government to appoint a District Women Protection Officer and Women Protection Officers... Section 25 requires the PWPA to conduct performance audits... Section 27 mandates regular training for protection officers and staff... Section 28 mandates that the PWPA submit an annual report within three months of the end of the financial year... Section 29 requires the Government to make rules for carrying out the purposes of the Act.

xvii) Section 3 of the Punjab Women Protection Authority Act 2017 mandates the Government to establish the PWPA to fulfill the Act's purposes... Section 19 of the Act empowers the Government to conduct a performance audit of the PWPA... Section 20 of the Act requires the Director General to submit an annual performance report to the PWPA within three months of the end of each financial year... Section 23 provides that, subject to the Act and the rules, the PWPA may frame regulations for matters not provided for in the Act or rules and for which provision is necessary or expedient.

xviii) The following guidelines for administration and functioning and oversight as developed by the Social Welfare Department are currently in the field for the regulation of the Dar-ul-Amans/shelter homes:

- (i) Guidelines 2015 for the Dar-ul-Amans in Punjab (Shelter Homes for Women in Distress).
- (ii) Guidelines for the Protection of the Residents' Rights inside the Duas.
- (iii) TORs for the Provision of Legal Aid Services in Dar-ul-Amans.
- (iv) Complaints Management Committee TORs – as approved by Social Welfare Department in December 2014 to deal with Human Rights violations in Duas.
- (v) Advisory Committees Notification and Functions, 2015.

xix) Need for the establishment of District Women Protection Committees to ensure monitoring and evaluation, Regulation of privately run shelter homes, Proper oversight mechanisms are needed to eliminate any chance of residents being forced into marriage, Legislative framework for the protection of children.

xx) Forced marriage is a serious criminal offence under section 498B PPC, punishable by up to seven years of imprisonment and a fine of Rs.500,000/.

xxi) The executive authority of provincial governments in Pakistan is defined by Articles 137, 138, and 139(3) of the Constitution. Article 137 states that a province's executive authority, subject to the Constitution, extends to matters on which the Provincial Assembly has the power to legislate. However, in any matter where both the Federal Parliament and the Provincial Assembly have legislative powers, the executive authority of the Province shall be subject to and limited by the executive authority expressly conferred by the Constitution or federal law.

xxii) Article 139(3) mandates the Provincial Government to establish rules for the allocation and transaction of its business. The Punjab Government has framed the Rules of Business 2011 under this mandate. These sub-constitutional rules solely pertain to the organization and regulation of the government's internal workings and do not equate to the legislative conferment of jurisdiction. The First Schedule lists the departments, while the Second Schedule details the distribution of business among them.

xxiii) According to the Second Schedule of the Rules of Business, the Social Welfare Department is responsible for the "registration, technical assistance, and monitoring of social welfare agencies." It also handles social protection, including institutional care, skill development, rehabilitation, and the "eradication of social evils" as envisioned in Article 37 of the Constitution.

xxiv) Parliament has enacted the National Commission on the Rights of the Child Act, 2017 (NCRC Act 2017) ... The Commission's functions, as outlined in Section 15 of the Act. include examining and recommending changes to legislation and administrative proposals related to child rights; liaising with provincial commissions and organizations; reviewing and recommending measures for effective implementation of laws and policies protecting child rights; reporting on the effectiveness of such laws and policies; inquiring into violations of child rights and recommending actions; examining factors inhibiting child rights enjoyment such as violence and exploitation; sponsoring research and maintaining a database on child issues; spreading awareness and promoting dialogue on child rights; reviewing existing policies and programmes on child rights in light of international instruments and make recommendations for their effective implementation.

xxv) The NCRC is an independent statutory body, while the NCCWD operates under the Ministry of Human Rights at the federal level. They function in parallel but complement each other. The NCRC acts as an oversight body, responsible for investigating child rights violations and holding the government accountable for its obligations toward children. In contrast, the NCCWD focuses on policy coordination and programme implementation, particularly at the international level, including the submission of mandatory periodic reports on the implementation of the UNCRC.

xxvi) The following statutes enacted by the provincial legislature play a crucial role in establishing and administering shelter homes and Protection Centres for children:

- i) Punjab Government Rules of Business, 2011 (the "Rules of Business").
- ii) Punjab Vagrancy Ordinance, 1958 (the "Vagrancy Ordinance");
- iii) Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 (the "SWA Registration and Control Ordinance"); and
- iv) Punjab Destitute and Neglected Children Act, 2004 (the "PNDC Act of 2004") along with the Punjab Destitute and Neglected Children (Registration of Organizations Managing Accommodation) Rules, 2019 (the "PNDC 2019 Rules") made thereunder.

xxvii) The Vagrancy Ordinance defines a child as a person under fourteen and includes provisions for their protection. It establishes welfare homes for vagrants,

including children, and allows children without a livelihood to gain voluntary admission to these homes. The administration of the Vagrancy Ordinance falls under both the Social Welfare Department and the Home Department, according to the Rules of Business.

xxviii) The Home Department also administers the Punjab Destitute and Neglected Children Act 2004 (PDNC Act), which protects children under eighteen... The Act establishes the Child Protection and Welfare Bureau (CPWB), an autonomous body under the Home Department, responsible for managing and regulating child protection institutions. The CPWB's powers include establishing and recognizing child protection institutions, overseeing their operations, and ensuring the well-being of destitute and neglected children.

xxix) It should also be noted that, according to Section 20 of the PDNC Act, the CPWB is authorized to recognize, register, and oversee only organizations managed by either local governments or non-governmental organizations. Hence, it cannot control or oversee the Social Welfare Department, a government entity..

xxx) However, it is well-established that courts cannot issue a writ or direction to the legislature to enact a law. Nonetheless, in *Sharaf Faridi and others v. The Federation of Islamic Republic of Pakistan* and another (PLD 1989 Karachi 404), a seven-member Bench of the Sindh High Court held that, in exceptional circumstances, the High Court may direct the Federal and/or Provincial Government to initiate legislative measures. The Court reasoned that there is a marked distinction between a directive to the legislature to legislate and a directive to the Executive to initiate legislative measures.

xxxi) The writ of mandamus dates back to ancient times. However, the doctrine of continuing mandamus is a modern innovation. Continuing mandamus, also referred to as structural interdict or structural injunction, consists of a series of orders issued by a court of law over an extended period directing an authority to perform its statutory functions or duties. The court does not dispose of the case but keeps it pending to supervise the performance of the duty and execution of the mandate. This approach is used in situations that cannot be resolved quickly and require a solution over a long time-sometimes even years.

- Conclusion:**
- i) The Universal Declaration of Human Rights (UDHR) under Article 25 articulates the right to an adequate standard of living, including housing.
  - ii) CEDAW address the provision of shelters and support services to women who are victims of violence.
  - iii) See above analysis No iii.
  - iv) Strategic Objective D.1. of the Declaration calls for integrating measures to prevent and eliminate violence against women.
  - v) See above analysis No v.
  - vi) See above analysis No vi.
  - vii) See above analysis No vii.
  - viii) See above analysis No viii.
  - ix) The United Nations Guidelines for the Alternative Care of Children emphasize

the importance of family and community-based care.

- x) The right to housing can be inferred from Article 9, Article 14 and Article 25.
- xi) The doctrine of *parens patriae* refers to the State's role as a guardian for those who are unable to care for themselves.
- xii) See above analysis No xii.
- xiii) The Punjab Protection of Women against Violence Act, 2016 (the "Women Protection Act"), which was subsequently amended in 2022.
- xiv) See above analysis No xiv.
- xv) The PWPA is empowered to issue SOPs, guidelines, and instructions to Protection Centres and shelter homes.
- xvi) See above analysis No xvi.
- xvii) See above analysis No xvii.
- xviii) See above analysis No xviii.
- xix) See above analysis No xix.
- xx) Section 498B PPC, punishable by up to seven years of imprisonment and a fine of Rs.500,000/-.
- xxi) See above analysis No xxi.
- xxii) These sub-constitutional rules solely pertain to the organization and regulation of the government's internal workings and do not equate to the legislative conferment of jurisdiction.
- xxiii) See above analysis No xxiii.
- xxiv) See above analysis No xxiv.
- xxv) They function in parallel but complement each other.
- xxvi) See above analysis No xxvi.
- xxvii) See above analysis No xxvii.
- xxviii) See above analysis No xxviii.
- xxix) CPWB cannot control or oversee the Social Welfare Department or a government entity.
- xxx) See above analysis No xxx.
- xxxi) See above analysis No xxxi.

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**18. Lahore High Court**  
**Writ Petition No.498 of 2022**  
**M/s Sadiq Poultry (Private) Limited v. Federation of Pakistan and others**  
**Mr. Justice Jawad Hassan**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4698.pdf>

**Facts:** Petitioners are running the poultry business. They were issued show-cause notices by the Competition Commission of Pakistan ("CCP") under section 30 of the Competition Act, 2010 ("Act") on the basis of inquiry report. Petitioners challenged the same through this Writ Petition along with other connected Writ Petition. As the common questions of law and facts were involved so both were decided through this judgment.

**Issues:**

- i) What does the examination of the "Preamble" of the Act reveal?
- ii) In which sense completion law is known for?



- iii) Which kinds of powers are bestowed upon “CCP” by sections 28, 30 and 37 of the Act *ibid*?
- iv) In what sense, section 30 sub-sections (1) and (2) of the “Act” *ibid* are *pari materia* to section 16 of the Punjab Environment Protection Act, 1997?.
- v) When does the operation of section 30 (2) of the Act *ibid* starts?
- vi) What are the plain meanings of section 30(2) of the Act *ibid*?
- vii) Which provision of the Act *ibid* delineates the power of “CCP” to initiate the proceedings?
- viii) Why the procedural safeguard is essential?
- ix) What is the concept of “show cause notice”?
- x) Whether the issuance of show cause notice is an adverse order?
- xi) What is the legal fate of writ petition moved against the show cause notice?
- xii) What is doctrine of ripeness?
- xiii) What is the foreign law genesis of ripeness?
- xiv) On what principle ripeness is grounded?
- xv) Which type of protection, doctrine ripeness provides?
- xvi) What is the basis object and purpose of “CCP” reflected in the preamble of the Act?

**Analysis:**

- i) This Court will examine certain provisions of the “Act” preamble of which provides for free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti-competitive behavior.
- ii) The competition law is also known as antitrust law that regulates the conduct and organization of businesses in order to promote competition and prevent unjustified monopolies.
- iii) Section 28 of the “Act” empowers the “CCP” to initiate proceedings against the individuals and undertakings committing contravention or non-compliance of the provisions of the “Act”. While Section 30 of the “Act” authorizes the “CCP” to pass orders in case of breach and violation of Chapter-II and prior to passing any order, a notice highlighting the specific reasons for initiating proceedings coupled with providing an opportunity of hearing is also mandated. In addition, thereto, the “CCP” is also empowered under Section 37 of the “Act” to conduct enquiries and studies on matters relevant to the provisions of the “Act”.
- iv) It is observed that Section 30 (1) and (2) of the “Act” is *perimetria* to Section 16 of the Punjab Environment Protection Act, 1997 wherein the Authority, Commission or Agency has to be satisfied itself for contravention of provision of the Act before making any proceedings in the case but such satisfaction cannot be done unless sub-section 30(2) of the “Act” is invoked and thus it has to be read first as the “CCP” has to give notice of intention to make order and to give undertaking an opportunity to be heard the parties in details.
- v) Section 30(2) of the “Act” then comes into play with the notice issued by the “CCP” with its intention to make orders stating reasons to the undertaking of contravention with some material which the “CCP” based it on certain material it

has then just to sit with the Respondents and clarify whether there is any contravention of the provision of the “Act” and such notice issued under this section has to be read with Section 37(4) of the “Act” as per enquiry initiated under Section 37 of the “Act” which has already been done by the “CCP” in this case.

vi) The language of Section 30(2) of the “Act” is very clear which states that the “CCP” firstly shall serve notice of its intention stating reasons to the undertaking and by giving an opportunity of being heard with supportive material whereas as per proviso to Section 30(2), the “CCP” can decide the case *ex parte* in case the undertaking does not avail the opportunity of being heard.

vii) It is evident that Section 28 of the “Act” delineates the functions and powers of the “CCP”, empowering it to initiate ‘proceedings’ in accordance with the procedures of the “Act”. This section explicitly states that the “CCP” may conduct enquiries into the affairs of any undertaking as may be necessary for the purposes of the “Act”.

viii) Procedural safeguard is essential for maintaining fairness and transparency in the regulatory process.

ix) The term ‘show cause’ has been defined in Black’s Law Dictionary 11th edition, as ‘To produce a satisfactory explanation or excuse, usu. In connection with a motion or application to a court’. The Supreme Court in COMMISSIONER INLAND REVENUE, LAHORE Vs M/S. MILLAT TRACTORS LIMITED, LAHORE and others (2024 SCMR 700) has eloquently examined, explicated and laid down the meaning and scope of the term show cause notice and held that it as a formal communication that informs the recipient of alleged legal violations and provides them an opportunity to respond, embodying the principles of natural justice and due process, which ensure a fair hearing and protection of rights before any adverse action is taken.

x) A show cause notice is therefore not a testament of an adverse proceeding against a party rather it is an intimation of initiation of a process, which requires certain answers and clarifications from the party being addressed to.

xi) It is thus a well settled principle of law that mere issuance of a show cause notice is not an adverse order and writ petition there against is not maintainable.

xii) From the literal standpoint the term ‘*ripeness*’ has been defined in Blacks’ Law Dictionary, 11th Edition as ‘*The state of a dispute that has reached, but has not passed, the point when the facts have developed sufficiently to permit an intelligent and useful decision to be made. The requirement that this state must exist before a court will decide a controversy*’...the term ‘*doctrine of ripeness*’ has been defined in Advanced Law Lexicon 4th Edition p. 4276 as “*A doctrine prohibiting federal Courts from exercising jurisdiction over a case until an actual controversy is presented involving a threat of injury that is real and immediate*”.

xiii) Apart from the dictionary definition, the concept of doctrine of ripeness is also the subject of discussion in multiple legal article. One of which was published in Chicago Law Journal (Volume No.75) under the title “*No Time Is the Right Time: The Supreme Court's Use of Ripeness to Block Judicial Re o Block Judicial Review of Forrest Plans for Environmental Plans for Environmental*” in which the author

of the article articulated the doctrine of ripeness in the terms “ripeness is a doctrine that relates to the timing of judicial review, asking if the court is equipped to adjudicate the issues before it. The basic rationale of the ripeness doctrine is to prevent the courts through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties”.

xiv) The principle at hand is grounded in the notion that judicial resources must be preserved, ensuring that Courts engage only with disputes that are actual and immediate.

xv) This principle protects agencies from judicial interference until their decisions are formalized and felt by the challenging parties, allowing courts to benefit from agency expertise and a developed record.

xvi) The basic emphasis was focused on its preamble of the “Act” where it has been clearly mentioned that it was made to ensure (i) free competition in all spheres of commercial and economic activity; (ii) enhance economic efficiency; (iii) protect consumers from anti-competitive behaviour; (iv) provide for establishment of the “CCP” to maintain and enhance competition and for matters connected therewith or incidental thereto. The preamble to a statute is though not an operational part of the enactment but it is a gateway, which opens before us the purpose and intent of the legislature, which necessitated the legislation on the subject and also sheds clear light on the goals which the legislator aimed to secure through the introduction of such law. The preamble of a statute, therefore holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law.

- Conclusion:**
- i) The “Preamble” of the the Competition Act, 2010 is relating to provision of independent economic and to and to guard the consumer against anti-competitive behavior.
  - ii) See above analysis No. ii.
  - iii) Section 28, 30 and 37 of the “Act” empowers the “CCP” to initiate proceedings, to pass orders in case of breach and violation of Chapter-II and to conduct enquiries respectively.
  - iv) See above analysis No.iv
  - v) See above analysis No.v
  - vi) Section 30(2) of the “Act” requires the “CCP” to serve notice upon undertaking with supportive material and in case undertaking does not avail the opportunity then the “CCP” can decide the case ex parte.
  - vii) See above analysis No. vii
  - viii) See above analysis No. viii
  - ix) The term ‘*show cause*’ is defined to be a process for production of satisfactory explanation or excuse and it is held to be embodying the principles of natural justice prior to take adverse action.
  - x) See above analysis No. x
  - xi) See above analysis No.xii

- xii) See above analysis No.xii
- xiii) See above analysis No. xiii
- xiv) See above analysis No. xiv
- xv) Doctrine of ripeness protects agencies from judicial interference.
- xvi) See above analysis No. xvi

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**19. Lahore High Court**  
**Amal Sukhera v. Govt. of Punjab etc.**  
**W.P. No. 69910/2024.**  
**Mr. Justice Jawad Hassan**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4946.pdf>

**Facts:** Through the writ petition (Writ of Mandamus), the petitioner (age three years) sought direction to the Respondents to do, what they are required by law to do and in this case, to implement provisions of Section 15 of the Punjab Environmental Protection Act, 1997 (the “Act”) read with the Punjab Environmental Protection (Motor Vehicles) Rules, 2013 (the “2013 Rules”).

**Issues:**

- i) What are the powers and duties of a secretary of a Department?
- ii) What does the preamble of Punjab Environmental Protection Act, 1997 say, and how it defines the “sustainable development”?

**Analysis:**

- i) This Court has already strengthened the scope of Rule 10 of the 2011 Rules in the case of PIA Officers Cooperative Housing Society Limited versus Province of Punjab etc. (2024 CLC 947 947) (Rawalpindi Bench) by holding that Secretary, being official head of the Department, can look into the administrative affairs of the Department. In the instant case, the Secretary, Environmental Protection Department, Lahore/ Respondent No.1 is the official head of the department and he is fully empowered to make (i) proper legislation; (ii) policy formulation; and (iii) planning in respect of various fields related to environment, as specified under the 2011 Rules. He may also take all the necessary measures for perfect administration of the relevant laws.
- ii) Moreover, “Preamble” of the Act deals with the protection, conservation, rehabilitation and improvement of environment as well as prevention and control of the pollution couple with the fact that Section 2(xlii) of the Act defines the “sustainable development” as the development which meets the needs of the present generation without compromising the ability of future generations to meet their needs.

**Conclusion:**

- i) See above analysis No.1
- ii) See above analysis No.2

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20. **Lahore High court**  
**Manzoor Elahi v. Rehmat Ali**  
**C.R. No.530 of 2023**  
**Mr. Justice Jawad Hassan**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4854.pdf>

**Facts:** A suit for declaration along with possession was filed by the Respondent, which was contested by the Petitioner through the filing of a Written Statement. After the framing of issues and recording of evidence, the suit was decreed. The Petitioner filed an appeal, which was also dismissed. Hence, this petition.

**Issues:**

- i) Whether the court is bound to decide the legal issues being not pressed?
- ii) Whether the general issues of barring the suit without specifying limitation can be addressed by Court?
- iii) Whether the issue of maintainability under Order VII Rule II CPC can be dealt with in general way?

**Analysis:** i) Although it was the duty of the trial court to first decide whether the suit is barred by law or not, but the trial court decreed the suit on the basis of facts...The above reproduced provision of law makes it amply clear that where an issue of law arises, that issue must be tried first. But this provision also specifies a condition that by deciding the said issue of law, the case or any part thereof may be disposed of. This conditional principle of application has been elaborated through numerous judgments of the Supreme Court of Pakistan wherein, it has been held that the provision of Order XIV Rule 2 CPC is mandatory though before trying the issue of law as a preliminary issue, the court has to be convinced that by doing so, fate of whole case can be decided. Issues of law which go to the root of the whole case and capable to be decided without evidence, the court should decide that issue first. It has further been held that if issues are not framed but allegations are made in the plaint and they are rebutted in the written statement, it is open to the court to allow the parties to lead evidence on such point and to give decision on it without framing any issue...The interpretation of the provision of Order XIV Rule 2 CPC has put a clear condition, thereby leaving it to the discretion of the trial court to frame and decide the legal issue first or together with the issues pertaining to factual controversy. It has further been settled that it is open to the court to allow parties to lead evidence on legal issues without having it formally framed or whether pressed or not by the parties.

ii)The fourth ground for rejection of plaint is ‘barred by law’. The ‘law’ means written law or statute law and is used in generic sense. Law means – a formal pronouncement of the will of a competent law giver. Law includes- constitution, statutes, judicial principles, rules, by-laws etc., which squarely falls within the ambit of clause (d) of Rule 11, Order VII CPC. Limitation is also of the ground which may bar filing of suit after lapse of the provided time. There is no express direction of law to frame a specific issue in respect of limitation, provided an issue in respect of Order VII Rule 11 is framed since it not only covers barring of the suit by any law under clause (d) rather it covers clauses (a),(b) and (c) Order VII

Rule 11 as well.

iii) So far as the question that the issue of maintainability under Order VII Rule 11 CPC can be dealt with in general way, the answer of which has already been evaluated in the moot point No.1 and 2 i.e. “it is open to the court to allow parties to lead evidence on legal issues without having it formally framed or whether pressed or not by the parties’ and ‘there is no express direction of law to frame a specific issue in respect of limitation, provided an issue in respect of Order VII Rule 11 is framed since it not only covers barring of the suit by any law under clause (d) rather it covers clauses (a),(b) and (c) Order VII Rule 11 as well.

- Conclusion:**
- i) The court is not bound to decide legal issues that are not pressed by the parties, but it has the discretion to do so if such issues could dispose of the case
  - ii) The court can examine the limitation aspect of a suit even without a specific issue being framed, as it falls within the scope of Order VII Rule 11 CPC.
  - iii) The issue of maintainability under Order VII Rule 11 CPC can be addressed generally, as it covers multiple grounds for rejecting a plaint without the need for specific issues to be framed.

**21. Lahore High Court**  
**Naseem Bibi, etc. v. Imran Qayyum, etc.**  
**Writ Petition No.57227 of 2024**  
**Mr. Justice Jawad Hassan.**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4981.pdf>

**Facts:** Respondents filed a suit for partition, which was decreed. On filing an appeal, the case was remanded to the trial court for a fresh decision, which was again challenged in the appellate court, resulting in another remand. After the remand, internal auction proceedings were initiated under Section 10 of the Punjab Partition of Immoveable Property Act, 2012 which were assailed by the petitioners contending that the auction process violated procedural requirements, including their absence and lack of proper notice.

- Issues:**
- i) Does non-compliance with the procedural requirements of the Punjab Partition of Immoveable Property Act, 2012, invalidate the proceedings?
  - ii) Which Section of the Punjab Partition of Immoveable Property Act, 2012 deals with internal Auction and whether presence of all co-owners or their agents is mandatory under the same Act?
  - iii) Which Article of the Constitution of Islamic Republic of Pakistan, 1973 provides right of fair trial?
  - iv) Act of court should not prejudice the rights of the parties.
  - v) Which Article of the Constitution of Islamic Republic of Pakistan, 1973 guarantee every citizen the right to be treated in accordance with the law?
  - vi) Is the right to be heard essential in all judicial proceedings?

**Analysis:** i) There is no denial of the fact that the “Act” is a procedural law which enunciates certain steps i.e. filing of the suit, summoning of Defendants, appearance of

Defendants and filing of written statement within a stipulated period, ascertainment of mesne profit, determination of question of title, if any or share; appointment of referee for partition, internal auction, open auction and private settlement. While conducting proceedings it is incumbent upon the court of law to adhere to each and every step so that the requirement of law and justice should be complied with.

ii) Internal auction of the property amongst co-sharers/co-owners, falls within the ambit of Section 10 of the Act...From the language of Section 10(2) of the "Act" it unambiguously clears that the Court has to require all the co-owners to be present in person or through their authorized agents on the date of internal auction. The rationale behind the presence of all the co-owners either personally or through their learned counsel is that opportunity of hearing is to be given to the parties so that the ends of justice may be procured.

iii) Article 10-A of the "Constitution" provides right of fair trial and due process for determination of rights and obligations.

iv) It is the ceremonial principle of law that the act of the Court should not cause prejudiced to the rights of the Parties, which finds its basis in old latin maxim Actus Curiae Neminem Gravabit.

v) Article 4 of the Constitution clearly states that it is inalienable right of every citizen including Petitioners to be treated in accordance with law by the Respondents and no action detrimental to the reputation, life, and liberty shall be taken except as per law.

vi) The maxim Audi Alteram Partem ensures that no party shall be condemned unheard, mandating that all parties affected by judicial proceedings must be given a fair opportunity to present their case.

**Conclusion:** i) It is incumbent upon the court of law to adhere to each and every step so that the requirement of law and justice should be complied with.

ii) Section 10(2) states that the Court has to require all the co-owners to be present in person on the date of internal auction.

iii) See above analysis no iii.

iv) Act of the Court should not cause prejudice rights of the Parties.

v) See above analysis no v.

vi) All parties affected by judicial proceedings must be given a fair opportunity to present their case.

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22.

**Lahore High Court**

**Ghulam Fareed v. Muhammad Bilal, etc.**

**C.R. No. 574 of 2024**

**Mr. Justice Muzamil Akhtar Shabir**

<https://sys.lhc.gov.pk/appjudgments/2024LHC4961.pdf>

**Facts:**

The case involves a dispute over the possession of a 14-marla piece of land. Respondent No.1 filed a suit claiming ownership based on a registered sale deed, which Petitioner contested, alleging fraud and claiming ownership through a prior mutation. After multiple rounds of litigation, the petitioner challenged the dismissal

of his application under Section 12(2) C.P.C. on grounds of fraud and misrepresentation.

- Issues:**
- i) What is the competent forum to challenge the validity of a judgment, decree, or order under Section 12(2) C.P.C.?
  - ii) Whether application u/s. 12(2) CPC lies before the High Court or Supreme Court where the Apex Court refuse to grant leave?
  - iii) Can a party reinitiate litigation by filing an application under Section 12(2) C.P.C. in a subordinate court after findings have been affirmed by higher forums?
  - iv) Whether the question of limitation is to be addressed where the petition is non-maintainable?

- Analysis:**
- i) Application under Section 12(2) C.P.C. is required to be made before the court that has passed the final decision, which principle of law has been affirmed by the Supreme Court in judgment reported as 'Province of Punjab through Collector, Sialkot versus Muhammad Irshad Bajwa' (1999 SCMR 1555) which provides that competent forum to challenge the validity of judgment, decree or order under Section 12(2), C.P.C. is the Court which passed the final order.
  - ii) In the present case, the final order had been passed by the High Court as the Hon'ble Supreme Court had not entertained the petitioner's application for leave to appeal against the same. Reliance in this regard is placed on judgments of the Supreme Court in case titled 'Khawaja Muhammad Yousaf versus Federal Government through Secretary, Ministry of Kashmir Affairs and Northern Areas and others' (1999 SCMR 1516) where in it is held that if Supreme Court merely reaffirms a judgment or order of a High Court by refusing leave, the final judgment in terms of Section 12(2), C.P.C. will be of the High Court and not of the Supreme Court.
  - iii) It is pertinent to mention here that this argument of the petitioner is fallacious for the reason that supposing an order passed by the Civil Court/Trial Court is upheld up to this Court or the Hon'ble Supreme Court on merit and not on technical grounds, then this assertion of the petitioner would enable the aggrieved party to restart another round of litigation by filing application under Section 12(2) C.P.C. before the Civil Court by ignoring the findings affirmed by the forums above.
  - iv) As regards the question that said application was barred by time or not, said aspect of the matter was not required to be decided in view of the fact that said application was not maintainable before Additional District Judge...

- Conclusion:**
- i) Application under Section 12(2) C.P.C. is required to be made before the court that has passed the final decision.
  - ii) The final order had been passed by the High Court as the Hon'ble Supreme Court had not entertained the petitioner's application for leave to appeal against the same.
  - iii) No, re-litigation under Section 12(2) C.P.C. is barred after higher forum affirmations.
  - iv) Said aspect of the matter was not required to be decided in view of the fact that said application was not maintainable before Additional District Judge.



**23. Lahore High Court**  
**Mst. Kiran Saba v. Judge Family Court etc.**  
**Diary No. 945 of 2024**  
**Mr. Justice Muzamil Akhtar Shabir**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4834.pdf>

**Facts:** The court office raised an objection regarding the petition's proper forum, suggesting it should be filed before Directorate of District Judiciary. The court has ordered the petition to be scheduled for a hearing to address the issue on judicial side. The petitioner seeks a court directive for the speedy resolution of her family suit, which includes claims related to dissolution of marriage, maintenance, dowry items, gold, residential property, and dower, following her expulsion from the respondent's home. Despite the statutory time limit, the case remains pending, and the petitioner requests expedited handling to secure timely justice.

**Issues:**

- i) Should the Family Court decide a case within six months, allowing either party to seek High Court intervention if delayed?
- ii) Does a proviso strictly control and qualify only the main section it follows?
- iii) What is the purpose of 'proviso'?
- iv) Can a petitioner use any procedure to approach the High Court?

**Analysis:**

- i) The Family Court in terms of the Section 12-A of the Act is required to decide a case within six months from the date of institution which mandate is controlled by the proviso to the afore referred Section that if the case is not disposed of within six months, either party has a right to make an application to the High Court for necessary direction as the High Court may deem fit.
- ii) It is settled by now that the proviso controls the meaning and scope of the main section. Generally a proviso was an exception to or qualified the main provision of law to which it was attached. Proviso was to be strictly construed and it applied only to the particular provision to which it was appended.
- iii) Purpose of a proviso was to qualify or modify the scope or ambit of the matter dealt with in the main provision and its effect was restricted to the particular situation specified in the proviso itself. Before a proviso could have any application, the section or provision itself must apply.
- iv) Law does not provide specific procedure for approaching this Court through writ petition or on its administrative side, hence any process or procedure could be adopted by the petitioner. Needless, to mention that every procedure which is not expressly prohibited is permitted unless the same specifically violates any provision of law or rules.

**Conclusion:**

- i) The Family Court must resolve cases within six months; if delayed, either party may request High Court intervention.
- ii) A proviso strictly limits and qualifies only the main section it follows.
- iii) See analysis No.iii.
- iv) A petitioner may use any procedure not explicitly prohibited by law.

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**24. Lahore High Court**  
**Muhammad Hussain v. The State, etc.**  
**Crl. Appeal No.69556/2024**  
**Mr. Justice Farooq Haider, Mr. Justice Muhammad Tariq Nadeem**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4966.pdf>

**Facts:** The petitioner challenged the vires of an order of the trial court dismissing his application to the effect of permission to recall the order declaring as a proclaimed offender. He was facing a criminal trial before the Additional Sessions Judge, wherein, he did not appear and declared as proclaimed offender.

**Issues:** i) What is appropriate for the court, when a proclaimed offender appear/surrender?  
 ii) Whether the application for recalling of order declaring as proclaimed offender is maintainable without surrender of the accused?

**Analysis:** i) When application for recalling of order dated 09.10.2024 was filed on behalf of appellant and if he (appellant) himself appeared/surrendered before the court then it was appropriate for the court either to take him into custody as his surety bond was already forfeited vide order dated 09.10.2024 or to recall aforementioned order dated 09.10.2024 if reasons were cogent, relevant and plausible for recalling the same and undoubtedly order dated 09.10.2024 is not the judgment rather an interim order; furthermore, it is also relevant to mention here that even warrant issued by the Court can be cancelled by the Court which issued.  
 ii) It goes without saying that application for recalling of order qua issuance of “warrant of arrest” or “proclamation” of accused is neither entertainable/maintainable nor proceedable without surrender of the accused in the Court.

**Conclusion:** i) It is appropriate for the court before which a proclaimed offender surrender/appear either to take him into custody or to recall the order declaring him as proclaimed offender; if plausible, cogent and relevant reasons.  
 ii) See above analysis at (ii).  
 iii) Such application to recall the order is not maintainable without surrender of the accused in the court.

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**25. Lahore High Court, Lahore**  
**Amina Bibi and another v. Province of Punjab and others**  
**W.P. No.30762 of 2022**  
**Mr. Justice Rasaal Hasan Syed**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4815.pdf>

**Facts:** Petitioner through writ petition had challenged order of First Appellate Court through which Revision Petition against the order of trial court was accepted. The trial court had dismissed application filed under Order VII Rule 11 CPC in which prayer was made for rejection of plaint on the ground of previous statement of donor regarding withdrawal of his suit filed earlier.

**Issues:** i) Whether statement regarding withdrawal of suit is legally valid when concerns are raised about withdrawing party's mental and physical competency?  
 ii) Whether court can convert plaint in a suit into application under section 12(2) CPC and vice-versa?

**Analysis:** i) In *Jeewan Shah v. Muhammad Shah* (PLD 2006 SC 202) it was observed as under: "There is no cavil with the proposition that in a civil suit the question of insanity cannot be determined without recording evidence by affording proper opportunity of hearing to the party concerned to substantiate the factum of insanity by leading evidence. The Court is duty bound to protect the interest of a lunatic person...."  
 ii) In the case of *Noor UL Amin and another v. Muhammad Hashim and 27 others* (1992 SCMR 1744) it was observed as under: "It is well settled, that all procedural laws are meant for advancing the cause of justice and they cannot be made a vehicle of oppression to suppress the remedies. It is also well-accepted principle of law that Courts always lean in favour of adjudication on merit rather than stifling proceedings on technicalities. A cursory reading of the plaint in Suit No.231 of 1986 instituted by the petitioners will show that it contained all the ingredients of section 12(2), C.P.C. Mere fact that it was described as a plaint and was registered as plaint could not deprive the Court of its jurisdiction to decide it as an application under section 12(2), C.P.C. if otherwise such jurisdiction was available to the Court under the law... The Courts, in order to do justice between the parties, would generally allow treatment/conversion of proceedings of one kind into another, unless there exists some legal bar against such treatment/conversion..." Reference can also be made to the case of *Syed Sadaqat Sultan v. Bahadar and another* (2007 YLR 2905) where it was observed that a suit for specific performance and cancellation of decree on the ground of fraud qua the suit property, the court had jurisdiction to decide the plaint as an application under section 12(2), C.P.C.

**Conclusion:** i) See above analysis (i).  
 ii) The court is competent to convert the plaint in a suit into an application under section 12(2), C.P.C. and vice-versa provided just and fair circumstances obtained in the case to do so that also pointed to effective dispensation of justice.

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**26. Lahore High Court Lahore**  
**Malik Imtiaz Ahmad v. Government of Punjab through Secretary Irrigation Department Punjab, Lahore & others**  
**(Writ Petition No. 14268 and 13876 of 2024)**  
**Mr. Justice Asim Hafeez**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4669.pdf>

**Facts:** Both constitutional petitions manifest grievance arisen out of transfer orders of the petitioners, one relates to order of cancellation of transfer while the other is directed against the transfer affected.

**Issue:** Whether exercise of authority by the Chief Minister, through issuance of Notification No.PS/SCM/CMO/24/OT47/ dated 01.03.2024, imposing complete

ban on all kinds of transfers / postings with immediate effect, is justifiable under and endorsed by any applicable law?

**Analysis:** Executive authority so vested in the Government or Chief Minister is circumscribed by the law, to the extent legislated by the legislature. Chief Minister can exercise powers and perform functions within the limitations defined and contours prescribed through legislative fiat. There is no cavil that Postings and transfers are governed and regulated in terms of section 9 of the Civil Servants Act 1974 and rules framed thereunder, and according to the policy of the Government, unless aligned with the permissible limits, prescribed by law. Executive, by no stretch of imagination, could assume the role of the legislature(s), and proceed to legislate in garb of exercise of executive authority. Text of the Notification manifests centralization of powers / control and aggrandizement of authority, at the expense of subduing, effectively controlling and conspicuously undermining the independence and working of the civil servants / bureaucracy.

**Conclusion:** No law / judicial precedent is cited that supports or endorses action of imposition of complete ban on all kinds of transfers / postings, the act of arbitrarily encompassing all power unto the Chief Minister is nothing but sheer abuse of executive authority.

**27. Lahore High Court, Lahore**  
**Muhammad Zaman v. Government of Punjab, etc.**  
**W.P. No.12771 of 2024**  
**Mr. Justice Asim Hafeez**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC5004.pdf>

**Facts:** Petitioner filed the instant writ petition alleging that although he was considered for his appointment under Rule 17-A of Punjab Civil Servants (Appointment & Conditions of Service) Rules 1974, which right accrued to him before the omission of said rule vide Notification No. SOR-III (S&GAD) 2-60/2024 Dated 24.07.2024 yet he was denied by Punjab Public Service Commission (PPSC) not only for his entitlement qua appointment but also for grant of 10 % additional marks.

**Issues:** i) Whether PPSC's interpretation of the omission of Rule 17-A of the Rules 1974, is lawful, which read and enforced it retrospective?

**Analysis:** i) This Court already held that retrospective effect could not be extended to the Notification of the omission of Rule 17-A of the Rules 1974, while deciding constitutional petition, vide order of 14.10.2024, in the case bearing W.P.No.13444/2024 titled "SYED NOOR-UL-HADI SHAH VS. GOVERNMENT OF PUNJAB, etc"... There is no cavil that judgments, unless given retrospective effect qua enforceability, are prospective. No retrospectivity could be extended to the ratio settled in the case of General Post Office, Islamabad & others (supra). Effect of repeal in terms of section 4 of the Punjab General Clauses Act 1956 cannot be overlooked while attending to the grievance of the petitioner.

**Conclusion:** i) It is settled and legal principle of law that High Court cannot give retrospective effect to an omission in constitutional petition because judgments, unless given retrospective effect, are prospective.

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**28. Lahore High Court**  
**Muhammad Arshad & 28 others v. Province of the Punjab & 02 others.**  
**Writ Petition No.34094 of 2021**  
**Mr. Justice Ahmad Nadeem Arshad**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4677.pdf>

**Facts:** Through this writ petition under Article 199 of Constitution of Pakistan 1973, the petitioners have assailed the vires of notices issued by Forest Department; whereby petitioners were informed that according to amended Section 26 (1)(Q) of Forest Act, 1927 (Amended 2010) business with regard to establishment of Sawmills, firewood depots, wooden craft and furniture shops within the radius of 05 Miles (08 Kilometer) is prohibited, against the law and in case of violation six months imprisonment or fine or both sentences can be awarded and directed them to remove their business-places away from 05 miles/08 Kilometers radius of the forest otherwise penal action would be taken.

**Issues:**

- i) Whether the petitioners complied with the Rules and are justified to challenge the impugned notice?
- ii) Whether the factual controversy can be resolved under Article 199 of Constitution of Pakistan?
- iii) What is primary purpose for relocating sawmills and related operations away from forests?
- iv) What is rationale behind shifting sawmills, firewood godowns, and furniture showrooms away from forests?

**Analysis:**

- i) Afore-mentioned stipulations as well as Rules reflect that it was mandatory for the proprietor of the sawmills to get registration of their business establishment from the Forest Department and also maintain different registers (referred supra). Although, the petitioners have claimed that they are running the business after fulfilling all the formalities but none of the petitioners have annexed any proof with this petition which may suggest that they ever got registration from the Forest Department. Moreover, no document has been brought on record to establish that requisite registers have been maintained by them. Even they failed to establish on record that they are not doing their business within the five miles (eight kilometers) radius of the forest. In absence of such details, the petitioners are not justified to challenge the impugned notices..... In view of the above, respondents have rightly issued notices to the petitioners to shift their sawmills etc. away from the 05 miles (08 kilometers) radius of the forest boundary.
- ii) This Court, while sitting in writ jurisdiction, cannot delve into factual depth to resolve the whole dispute in a slipshod manner. The questions which involve factual

controversies cannot be resolved by this Court through the present summary procedure under Article 199 of the Constitution.

iii) The primary purpose for relocating sawmills and related operations away from forests is to protect natural ecosystems. When sawmills operate near forests, they often contribute to overexploitation, leading to deforestation and loss of biodiversity. Relocating these industries can foster a culture of responsible sourcing, promoting practices that prioritize forest regeneration and conservation. Industrial activities, such as those carried out in sawmills, can generate significant pollution in the form of noise, dust, and waste. The proximity of these operations to forested areas poses a risk to the surrounding environment, affecting air quality and water sources.

iv) The rationale behind shifting sawmills, firewood godowns, and furniture showrooms away from forests is multifaceted, encompassing environmental, economic, and social dimensions. This transition not only protects fragile ecosystems and promotes sustainable resource management but also contributes to cleaner urban environments and improved community relations. As the world grapples with the challenges of climate change and biodiversity loss, embracing such strategies will be essential for achieving a sustainable future that balances industrial needs with ecological preservation. By prioritizing the health of forests and communities, the way can be paved for a more harmonious coexistence between industry and nature. ....In the present era of global warming, there is a need to work rigorously to protect the forests. Forests are often referred to as the lungs of the Earth. They play a crucial role in mitigating climate change and combating global warming through several interconnected processes. From carbon sequestration to biodiversity preservation, forests are essential in our efforts to create a sustainable future.

- Conclusion:**
- i) The petitioners have complied with the Rules and are not justified to challenge the impugned notice.
  - ii) The factual controversy cannot be resolved under Article 199 of the Constitution of Pakistan, 1973.
  - iii) The primary purpose for relocating sawmills and related operations away from forests is to protect natural ecosystems
  - iv) See above analysis No. iv

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**29. Lahore High Court**  
**Muhammad Dilshad. v. The State and another**  
**Criminal Appeal No.59174/2019**  
**Rana M. Iqbal. v. Muhammad Dilshad and another**  
**Criminal Revision No.59075/2019**  
**Mr. Justice Muhammad Tariq Nadeem.**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4685.pdf>

- Facts:** Accused / appellant was convicted and sentenced for imprisonment for life under section 302(b) PPC, for committing murder of deceased, and to pay compensation

of Rs.500,000/- under section 544-A of Cr.P.C to the legal heirs of deceased and in default thereof to further undergo simple imprisonment for six months. Appellant filed criminal appeal for setting aside of his conviction & sentence whereas complainant filed criminal revision for enhancement of sentence.

**Issues:**

- i) Whether medical evidence confirms the prosecution version with regard to receipt of injury, its kind and the weapon used but does not identify the assailant?
- ii) Whether belated recovery of crime weapon would be helpful to the prosecution?
- iii) Whether non-association of people of vicinity with recovery proceedings is violation of provision of S.103 of Cr.P.C?
- iv) Whether report of Punjab Forensic Science Agency is inconsequential when recovery of crime weapon has been disbelieved?
- v) Is prosecution under obligation to establish motive in every case, what would affect if prosecution sets up motive but fails to prove?
- vi) Whether conviction can be upheld on shaky evidence?
- vii) Is benefit of doubt extended in favor of accused as grace?

**Analysis:**

i) It is by now well settled law that medical evidence is a type of supporting evidence, which may confirm the prosecution version with regard to receipt of injury, nature of injury, kind of weapon used in the occurrence but it would not identify the assailant.

ii) According to the statement of Umar Farooq Shah, SI/I.O. (PW8) the appellant was arrested on 16.02.2018, i.e. almost 16 days after the occurrence, therefore, preserving the crime weapon in his own house by appellant is against the nature, especially once the appellant decided to conceal the weapon, as is the case of the prosecution then there was no occasion that he would keep the same in such safe custody so as to get recover the same at a subsequent point of time and hand over to police as a souvenir, therefore, the alleged recovery of knife P-5 is not helpful to the prosecution.

iii) I have noted that the witness of recovery Amir Shahzad 497/C (PW9) is a police employee and while effecting the above mentioned recovery of knife P-5 Umar Farooq Shah, SI/I.O. (PW8) has not made any effort to associate the people of the vicinity. He in his cross-examination has also conceded this aspect as infra:-

*“I have not associated any Lumberdar or Councilor during recovery proceedings of the knife allegedly made by the accused. I have also not summoned any person from vicinity of the place of recovery to witness the recovery proceeding of knife.”*

In the light of above circumstances, I am of the considered view that while effecting the above mentioned recovery the mandatory provision of section 103, Cr.P.C. has blatantly been violated.

iv) In the light of above mentioned circumstances, when this Court has already disbelieved the recovery of knife P-5 and Umar Farooq Shah, SI/I.O. (PW8) has not stated in his evidence that knife P-5 was blood stained then the report of Punjab Forensic Science Agency, Lahore (Exh. PL) has lost its significance and, in this way inconsequential to the prosecution case.

v) Although, the prosecution is not under obligation to establish a motive in every murder case but it is also well settled principle of criminal jurisprudence that if prosecution sets up a motive but fails to prove it, then, it is the prosecution who has to suffer and not the accused.

vi) After analyzing the prosecution case from every angle, I have concluded that the case against the appellant is replete with doubts and his conviction and sentence cannot be upheld on the basis of such shaky and untrustworthy evidence.

vii) The Apex Court of the country time and again held that in the event of a doubt, the benefit must be given to the accused not as a matter of grace, but as a matter of right.

- Conclusion:**
- i) Medical evidence confirms the prosecution version with regard to receipt of injury, its kind and the weapon used but does not identify the assailant.
  - ii) Belated recovery of crime weapon is not helpful to the prosecution.
  - iii) See above analysis iii).
  - iv) When recovery of crime weapon has been disbelieved, then positive report of PFSA is inconsequential.
  - v) Prosecution is not obligated to set a motive in every case but if prosecution sets up a motive then it has to suffer if fails to prove it.
  - vi) Conviction cannot be upheld on the basis of shaky evidence.
  - vii) Benefit of doubt is extended to accused not as a matter of grace but as a matter of right.

**30. Lahore High Court Lahore**  
**Rai Muhammad Aslam v. Additional Sessions Judge, etc.**  
**(Criminal Miscellaneous No.40397-M of 2024)**  
**Mr. Justice Muhammad Amjad Rafiq**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4993.pdf>

**Facts:** The petition assails order passed by learned Additional Sessions Judge whereby accused/respondent was permanently exempted from his appearance in the trial on the ground that he is earning his livelihood abroad; though learned Magistrate had dismissed his application.

**Issues:**

- i) Whether sections 540-A and 205 in Code of Criminal Procedure 1898 can be interpreted in the manner so as to accommodate the accused to seek exemption of his attendance in the trial for earning of livelihood abroad?
- ii) Can “physical presence” of accused be substituted with “virtual presence” by the use of modern technology like video link (live link, Skype etc.)?

**Analysis:**

- i) The word “incapable” was derived from Late Latin word “incapābilis” which literally means unable to do or achieve (something); unable to behave rationally or manage one's affairs. In this context ageism has become institutionalized and contributes to the view that elderly people are socially redundant, incapable and dependent. Keeping in view the above definition, following could be the reasons for accused to hold them incapable of remaining before the Court; “Advance age,



child, woman particularly Parda-Nasheen lady, infirm, sick, epidemic outbreak, bereavement in family, ceremonial occupations, festive occasions, law and order situation, national duty, election affairs, religious duty, official commitments or duty, professional trainings inland or abroad, medical treatment abroad, earning of livelihood out of city or abroad, visit abroad, dual national.” Above list is not exhaustive which would include any other situation arising out of exigency or emergency response. The Supreme Court of Pakistan in “Haji AURANGZEB versus MUSHTAQ AHMAD and another” (PLD 2004 Supreme Court 160) though has denied relief of exemption from trial to the accused who was abroad yet only on ground that at the time of filing application accused was not before the Court; however, it did not declare that being abroad cannot be read as “incapable of remaining before the Court”. That was the reason this Court in a case reported as “MUHAMMAD NAWAZ versus The STATE and another” [2015 PCr.LJ 58 (Lahore)] has held that “incapable of remaining before the Court” does include earning of livelihood abroad. Same was the ratio of case reported as “AFTAB AHMAD versus The STATE through Assistant Advocate-General, Rawalkot” [2019 PCr.LJ 267 [Shariat Court (AJ & K)]. No doubt expeditious trial is the hallmark of criminal justice system and Chapter-2, Part-II of the Constitution of the Islamic Republic of Pakistan 1973 dealing with Principles of Policy (Articles 29-40) on the strength of Article 37(d) ordains that “it is the constitutional duty to ensure inexpensive and expeditious justice.” Article 29 of the Constitution states that it is the responsibility of each organ and authority of the State, and of each person performing functions on behalf of an organ or authority of the State, to act in accordance with those Principles in so far as they relate to the functions of the organ or authority. Article 29 (2) of the Constitution says that in so far as the observance of any particular Principle of Policy may be dependent upon resources being available for the purpose, the principle shall be regarded as being subject to the availability of resources. Availability of resources of course includes cooperation of parties, existence of sound processes or measures to take the offender on to the trial for early decision of the cases. If the processes are weak or not responding in due course of time then Court should resort to alternatives to ensure expeditious justice. Applying above theme on the situation that if time and again attendance of accused delays the process, then it is the bounden duty of the Court to exempt him from appearance and continue with trial in the presence of his counsel, and on default, adjourn or separate his trial.

ii) Section 353 of the Code requires recording of evidence in the presence of accused or in presence of his counsel if his attendance has been dispensed with. Though this section talks about physical presence of accused but in case reported as “MUHAMMAD HANIF VS THE STATE ETC.” (PLJ 2023 Cr. C 412), while dealing with mental disability, it was held that mental presence of accused is also essential otherwise trial would a farce. Similarly, as an alternative his “physical presence” can also be substituted with his “virtual presence” by the use of modern technology like video link (live link, Skype etc.), which has not been specifically prohibited. The Supreme Court of Pakistan in a case reported as “MEERA SHAFI

Versus ALI ZAFAR” (PLD 2023 Supreme Court 211) has recommended the idea of ‘Virtual Attendance’ substituting it with actual or physical presence. It has further been required from the Courts to extend the application of statutes to new things in order to respond the changing social realities of the time. Therefore, allowing modern technology of video conferencing to be read into the existing enactments enhances access to justice, promotes fair trial and introduces inexpensive and expeditious justice thereby advancing the fundamental rights under Articles 9 and 10A and principle of policy under Article 37(d) of the Constitution. In a case reported as “Khawaja ANWER MAJID Versus NATIONAL ACCOUNTABILITY BUREAU through Chairman NAB and another” (PLD 2020 Supreme Court 635), Supreme Court of Pakistan while granting bail to the accused therein permitted him to join investigation as and when required by the NAB and also ensure his representation before the Accountability Court, either personally or through video link, whichever is found convenient under the circumstances. In the event of physical incapacity, his request for dispensation and representation through a counsel shall be considered most thoughtfully. In a case reported as “IMRAN AHMAD KHAN NIAZI Versus SPECIAL JUDGE, (Anti-Terrorism Court), Lahore and 3 others” (PLD 2004 Lahore 486), a Division Bench of this Court, in the backdrop of particular circumstances, allowed the accused to appear in pre-arrest bail proceedings via Video link.

- Conclusion:** i) See analysis above.  
 ii) During the trial if the accused is incapable of remaining before the Court, he can seek his physical exemption for appearance either through lawyer or through virtual presence on video link.

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**31. Lahore High Court**  
**M/s Rafi Cotton Industries (Pvt). Ltd. etc. v. Bank Al-Habib, etc.**  
**EFA No. 30/2022**  
**Mr. Justice Asim Hafeez, Mr. Justice Anwaar Hussain.**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4800.pdf>

**Facts:** In this case, respondent *Bank* obtained a decree against the petitioners and initiated auction proceedings to recover the debt. The auction, conducted on 12.08.2022, saw the highest and second-highest bidders defaulting on the required deposit. Consequently, the bank, as the third-highest bidder, was awarded the property. The appellants challenged this outcome, arguing that auction procedures were violated by not re-auctioning the property after the initial defaults.

- Issues:** i) Whether the auction sale rendered invalid due to the appellants' failure to deposit 20% of the auctioned amount as required under Rule 90 of Order XXI of the Code of Civil Procedure, 1908?  
 ii) Is non-compliance with Rule 84's "forthwith re-sale" requirement upon bidder default a ground for nullifying the auction?  
 iii) Is an auction with only one bidder legally sufficient to meet public auction

standards

iv) Can auctioneers legally offer the property to successive bidders after the highest bidder defaults, without a fresh auction?

v) Does a decree-holder bank, as sole remaining bidder, have the right to acquire the property without re-auction?

**Analysis:**

i) We declare that notwithstanding the failure to deposit 20% of the amounts realized, auction sale cannot be confirmed in wake of violations committed - ratio settled in the case of 'MUHAMMAD ASHRAF and others' (supra) is attracted...

ii) Offering of such option to the second highest bidder does not constitute re-sale but tantamount to continue or resurrect an otherwise aborted sale / proceedings. Rule (84) of Order XXI of the Code, 1908 does not envisage or permits the practice of continuing further with an aborted sale, once default was committed by the successful purchaser, in terms thereof. By offering the option to purchase to the lower and then to the lowest bidder tantamount to hedge the success of the auction, which is not required under Rule (84) of Order XXI of the Code, 1908. Whether the Auctioneers were required to ensure the success of the auction even by conspicuously ignoring the mandate of law. This is an illegality. And mere invocation of sub-rule (2) of Rule (84) of Order XXI of the Code, 1908, in the facts and circumstances, does not dispense with the necessity of forthwith re-sale upon happening of an event of default – failure of declared successful purchaser to deposit 25% of the purchase money. Expression re-sale of the property has to be examined in the context of Rule (84), *ibid*, which does not imply sale of property to the next bidder in the bidder's list – if that was intended it would have been expressed through original Rule (84) or by virtue of Lahore High Court amendment. Hypothetically, if there are two bidders and if the highest bidder fails to deposit 25% of the purchase money, as required under Rule (84) of Order XXI of the Code, 1908, would it imply that the other bidder would claim right to purchase the property *ipso-facto*. No! Second bidder had no entitlement in such circumstances, who may participate in fresh sale proceedings and bid. Hence, offering of option to the second highest and thereafter to third highest bidder is contrary to the mandate of Rule (84) of Order XXI of the Code, 1908. An aborted auction sale cannot be resumed / resurrected upon proceeding to exhaust the list of bidders, in descending order. This manifests clear non-compliance and violation of mandatory requirement of law - Rule (84) of Order XXI of the Code, 1908..

iii) It is well-known that an auction is a form of sale of property to the highest bidder, usually as a result of competition between bidders who compete among themselves by offering competitive prices and the highest bid is normally approved, but according to the established norms and standards, the presence of at least two potential bidders is indispensable to carry out an auction in which competitive bidding is a key factor for free and transparent public auction...

iv) No continuity of sale proceedings was envisaged or directed in terms of Rule (84) of Order XXI of the Code, 1908, which prescribed option of re-sale, which implied annulment of the process of auction sale, upon happening of default under

Rule (84) of Order XXI of the Code, 1908.

v) In view of the facts narrated, we are constrained to hold that failing to interfere, upon being convinced that mandate of Rule (84) of Order XXI of the Code, 1908 has been violated, would extend premium to the decree holder Bank at the expense of causing substantial injury and wrongful loss to the appellants.

- Conclusion:**
- i) Failure to deposit 20% of the auction amount invalidate the auction proceedings.
  - ii) offering of option to the second highest and thereafter to third highest bidder is contrary to the mandate of Rule (84) of Order XXI of the Code, 1908.
  - iii) According to the established norms and standards, the presence of at least two potential bidders is indispensable to carry out an auction in which competitive bidding is a key factor for free and transparent public auction
  - iv) Rule (84) of Order XXI of the Code, 1908 does not envisage or permits the practice of continuing further with an aborted sale, once default was committed by the successful purchaser.
  - v) Failing to interfere, upon being convinced that mandate of Rule (84) of Order XXI of the Code, 1908 has been violated, would extend premium to the decree holder Bank at the expense of causing substantial injury and wrongful loss to the appellants.

**32. Lahore High Court**  
**Nasir Ahmad v. Amanullah Khan Durani Saduzai etc.**  
**RFA No. 267 of 2019.**  
**Mr. Justice Asim Hafeez & Mr. Justice Anwaar Hussain**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4786.pdf>

**Facts:** Through this single judgment, the present as well as connected appeal, has simultaneously been decided as both these appeals were directed against the same judgment and decree vide which the suit for declaration with permanent injunction instituted by the appellant was dismissed, whereas the suit for specific performance of contract instituted by respondents No.1 & 2 was decreed.

- Issues:**
- i) Whether non-provision of particulars and detail of fraud in pleadings in terms of Order. VI Rule 4 of CPC is demerit of a case?
  - ii) Whether evidence beyond pleadings, can be read and considered?
  - iii) Whether lack of cooperation (human conduct) by a party can be taken as adverse presumption against him?
  - iv) Whether presumption of fact is rebuttable. What it suggests in terms of inference?
  - v) Whether jurisdiction of the court to issue a decree of specific performance is discretionary/equitable in nature?
  - vi) How and by whom the secondary evidence can be adduced to prove the signature of a deceased witness on a particular document?

- Analysis:**
- i) The appellant in terms of order VI Rule 4 of the Code of Civil Procedure, 1908 has not given the particulars and details as to how the fraud was committed.--- The appellant, while filing suit for declaration on 06.04.2015, claimed having knowledge of the fraudulent agreement since January 2015, without disclosing details of alleged fraud practised by the respondents. Why the appellant was economical with the truth and had not disclosed factum of alleged fraud is another demerit of the case of the appellant.
  - ii) Moreover, when the appellant appeared as PW.1, he further improved his stance by stating that the blank white papers were signed by the appellant for the purpose of opening of the bank account and also in respect of the litigation with NHA, however, nowhere in the pleadings or in the evidence, the appellant has referred to any litigation with the NHA etc., and this fact rightly persuaded the Trial Court to hold that the agreement was executed by the appellant. Even otherwise, the said aspect of the evidence is beyond pleadings and it is settled law that evidence beyond pleadings cannot be read and considered.
  - iii) It is apparent from the order dated 22.06.2024 of the Trial Court, in the context of the additional issue, that the appellant was represented through attorney, and he had not appeared before the Trial Court during the proceedings, which remained pending therefrom February 2024 to June 2024, to facilitate an exercise of comparison of the signatures. This lack of cooperation is contrary to the normal human conduct, in a like situation where the appellant is placed in context of the plea of denial of execution of the agreement and the receipts, and further suggests an adverse inference against the appellant.--- The Court may consider the conduct of the parties which becomes relevant in granting and/or refusing decree for specific performance being discretionary and based on principles of equity.
  - iv) There is no cavil that presumption of fact is rebuttable, but in appropriate circumstances, it suggests an affirmative inference, when examined in the context of ordinary conduct of human beings / homo sapiens. Absence of the appellant to facilitate task of comparison of signatures provides sufficient reasons for inferring presumption of fact against appellant.
  - v) In this regard, this Court is to keep insight the settled legal position that the jurisdiction of the Courts to issue a decree of specific performance is discretionary/equitable in nature and in terms of Section 22 of the Specific Relief Act, 1877 (“the Act”), which facilitates and provides statutory classification of the instances where exercise of discretion by the Court(s) was limited and cases where such discretion could be liberally exercised.--- It is just and equitable to exercise discretion for ordering specific performance of the agreement as equity mandates that in a suit for specific performance, it is the duty of the Court to find out, which party has not performed and is trying to wriggle out of his contractual obligations.
  - vi) The Trial Court has erred in appreciating the fact that respondent No.1 himself appeared as DW.13 in secondary evidence to prove the signatures of deceased Muhammad Nadeem Khan Durrani on Exh.D3 by ignoring the fact that even though respondent No.1 was close relative of deceased Muhammad

Nadeem Khan Durrani but he was not familiar with signatures of deceased Muhammad Nadeem Khan Durrani as they have neither worked together nor concluded any transaction between them.

- Conclusion**
- i) The law require complete detail of fraud should be given in pleadings if it is alleged against the other party.
  - ii) Facts beyond pleadings and evidence, can not be read and considered.
  - iii) See above analysis No. (iii)
  - iv) See above analysis No. (iv)
  - v) Jurisdiction of the court to issue a decree of specific performance is discretionary/equitable in nature.
  - vi) See above analysis No. (vi)

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**33. Lahore High Court**  
**Shahzad Akbar Vs. Additional District Judge, etc.**  
**Writ Petition No.13290 of 2024**  
**Mr. Justice Anwaar Hussain**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4844.pdf>

**Facts:** Respondent No.3 instituted a suit for declaration against the petitioner and respondents No.4 and 5, inter alia, on the ground that after delegating right of divorce to the respondent, the petitioner has no right to pronounce talaq and therefore, respondents No.4 and 5 who are Administrator, Union Council No.3, MDA Chowk, Multan and Secretary, Union Council No.3, Shadab Colony, Multan, respectively, be restrained from issuing certificate of effectiveness of divorce. Ad-interim injunction was granted by the learned Trial Court, vide impugned order dated 05.08.2024, which has been further extended, vide orders dated 11.09.2024 as well as 28.09.2024. Feeling aggrieved, the petitioner filed appeal, alongwith application for condonation of delay, before the learned Addl. District Judge, Multan, which has been dismissed, vide impugned order dated 07.10.2024. Hence, the present constitutional petition.

- Issues:**
- i) Whether the present petition is maintainable as the impugned orders are interlocutory in nature?
  - ii) Whether the learned Civil Court is vested with the jurisdiction to try the declaratory suit, inter alia, regarding the reconciliation proceedings, issuance of certificate of effectiveness of divorce in the light of Section 5 of the West Pakistan Family Courts Act, 1964 (“Act, 1964”)?
  - iii) Whether a husband loses the right to pronounce talaq, once such right is delegated to the wife?
  - iv) Whether an order can be passed by the learned Civil Court restraining the officials of the Union Council concerned from performing their duties qua reconciliation and issue certificate of effectiveness of divorce, after pronouncement of talaq by the petitioner?

- Analysis:**
- i) As regards the first question, there is no cavil to the legal proposition that a constitutional petition is not maintainable against the interim orders passed by the Family Courts. However, in present case the impugned orders have been passed by the Civil Court and not by the Family Court. Moreover, if interlocutory orders are arbitrary, capricious and without jurisdiction, this Court in constitutional jurisdiction, can interfere by issuing a writ of certiorari in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 for correcting gross errors of jurisdiction. In this regard, case reported as “Inaam-ul-Haq vs. Muhammad Ali Shaheen and another” (2013 CLC 904) is referred.
  - ii) It is clear from the above quoted legal provisions as also dicta laid down in case of Major Muhammad Khalid Karim supra that exclusive jurisdiction has been conferred on the Family Court, established under Section 3 of the Act, 1964 to deal with matrimonial issues and the jurisdiction of other Courts including Civil Courts has been excluded and ousted. Thus, dissolution of marriage in all its modes and manners including khula and talaq-etafweez falls within the purview and jurisdiction of the Family Court.
  - iii) Admittedly, the petitioner has delegated the right to pronounce talaq in favour of the respondent in terms of entry recorded against Column No.18 of the nikahnama. The said act of the petitioner does not mean that the petitioner has denounced his own right to pronounce the talaq and intimate factum of pronouncement of talaq to the Union Council concerned, for further proceedings leading to the issuance of certificate of effectiveness of divorce in terms of provisions of the Ordinance, 1961. In terms of Ayat No.227 of Surah Al-Baqarah as also Ayat No.1 of Surah atTalaq, the husband has been conferred an absolute right to divorce his wife and even if said right is delegated to the wife, under the law of land, his own right of pronouncing divorce cannot be considered to be denounced.
  - iv) As regards the fourth question, this Court cannot lose sight of the fact that in terms of Section 56 of the Specific Relief Act, 1887, an injunction cannot be granted to interfere with the public duties of any department of the Federal Government or any Provincial Government; or with the sovereign acts of Foreign Government. In present case official respondents No.4 and 5 i.e., Administrator Union Council and Secretary, Union Council are under obligation in terms of the provision of the Ordinance, 1961 that upon receipt of a notice from husband regarding the pronouncement of talaq, necessary reconciliation proceedings should be initiated and in case of failure, certificate of effectiveness of divorce is issued to avoid any legal complication (for the parties qua their marital status). The said legal position gets further traction from Section 22 of the Act, 1964 in terms whereof even the Family Court, which is vested with exclusive jurisdiction in respect of all the matters relating to marriages, enforcement of rights under the nikahnama etc., cannot issue an injunctive order.

- Conclusion:**
- i) See conclusion No. i
  - ii) The Civil Court is not vested with the jurisdiction to try the declaratory suit in this regard.

iii) Husband doesn't lose the right to pronounce talaq, once such right is delegated to the wife.

iv) Civil court cannot pass such injunctive order.

**34. Lahore High Court**  
**Civil Revision No.350 of 2019**  
**Mst. Kubra Bibi v. Public at Large, etc.**  
**Mr. Justice Anwaar Hussain**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4839.pdf>

**Facts:** Respondent, being one of the legal heirs, applied for grant of succession certificate in respect of the amount lying in a account. Present petitioner (one of the respondents) contested the petition. After full-fledge trial, petition was allowed. Order was assailed in appeal which was dismissed, resultantly, the instant Civil Revision.

**Issues:** i) What is the scope of instructions, i.e., “either or survivor” given by the joint account holders to a bank?

**Analysis:** i) The legal question involved has been subject matter of number of cases before this Court as also before the other Coordinate High Courts in Pakistan. In case reported as “Syed Shah Pr Mian Kazmi v. Mst. Nelofer (widow) and others” (PLD 2012 Peshawar 101), it was held that, under the Islamic Law of Inheritance, no legal heir of a deceased bank account holder could be deprived from receiving his/her share from the bank account of the deceased even if there is nomination in favour of some other person or there are instructions on record such as “either or survivor”. This Court in case of “Dubai Islamic Bank Pakistan, etc. v. Mst. Saima Yasin etc.” bearing Civil Revision No.55-D of 2020 also held that with death of an account holder of joint account any authorization/authority given by the deceased stood automatically revoked and even a validly authorized person is denuded of such power after death of the principal as all assets of deceased by operation of law stood vested in the ownership of legal heirs of the deceased and the bank or the joint account holder are not empowered to unilaterally operate the account or withdraw any amount until and unless as per law a declaration of the rendition of account is obtained and succession certificate or letter of administration or probate is issued by the court of competent jurisdiction.

**Conclusion:** i) According to Islamic Law of Inheritance, all the legal heirs are entitled to receive their respective from the bank account of deceased account holder regardless of the fact that the nomination were made in favour of some persons.

**35. Lahore High Court**  
**Mst. Ayesha v. Mst. Shama, etc.**  
**Civil Revision No. 1581-D of 2019**  
**Mr. Justice Anwaar Hussain**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4778.pdf>



**Facts:** This Civil Revision is directed against the concurrent findings of the Courts below whereby the suit of the petitioner for declaration and cancellation of mutation was dismissed, and it was held that the said sale mutation in favor of respondent No.1 as well as the subsequent sale mutation in favor of respondent No.4 was valid and not result of fraud and misrepresentation it was noted that the petitioner was the real mother of respondent No.3. She filed the suit with the averments that she was an old age and an illiterate lady and that she neither executed General Power of Attorney in favor of her son/respondent No.3 nor got the same cancelled through any abtlnama, therefore, the impugned mutation No.--- dated 31.03.1991 in favor of respondent No.1, by respondent No.3 is based on fraud.

**Issue:**

- i) Whether pleadings are substitute to the evidence?
- ii) What are effects of inconsistency, *inter se*, pleadings and the evidence?
- iii) What is general principle and its exception about transfer of property by an attorney to his kith and kin?
- iv) What is scope of revisional jurisdictional of high court?

**Analysis:**

- i) It is settled law that the pleadings on their own are mere statement of the case by the person and are not a substitute to the evidence. Rather, the pleadings determine the contours and circumference within which, and in consonance whereof, the parties are to lead their respective evidence.
- ii) In case there is contradiction and inconsistency, *inter se*, the pleadings and the evidence, the same is mutually destructive to the case. The contradiction and inconsistency is self-evident and the case of the petitioner squarely falls within the purview of principle envisaged in terms of maxim “*Allegans Contraria Non Est Audiendus*” (A person who alleges things contradictory to each other is not to be heard).
- iii) The general principle requires prior and/or subsequent approval and consent of the principal by an attorney if he intends to transfer the property to his kith and kin on the basis of a GPA. The petitioner, by not challenging the transaction/transfer in the year 2003, when the GPA was got cancelled has exhibited her implicit if not explicit approval of the transaction and this case falls under the exception to the preceding general principle of law.
- iv) This Court (High Court) while exercising revisional jurisdiction can appraise and determine any evidence and/or question not looked into or adjudicated by the Courts below.

**Conclusion:**

- i) Pleadings outline the case but do not replace evidence.
- ii) Contradictory pleadings and evidence undermine the case.
- iii) Silence implies consent to transfer.
- iv) High Court reviews overlooked evidence.

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**36. Lahore High Court**  
**Ehtisham Ali v. Province of Punjab, etc.**  
**Writ Petition No.1802/2024**  
**Mr. Justice Anwaar Hussain**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC5025.pdf>

**Facts:** The petitioner, a Punjab Police Constable, applied for promotion to Sub-Inspector, successfully completing all assessments and receiving an appointment order. However, his appointment was withdrawn due to an FIR registered against him, despite his acquittal under Section 249-A of the Cr.P.C. and findings of innocence in a departmental inquiry.

**Issues:**

- i) Can an appointment be withdrawn solely based on an FIR when the accused is acquitted and found innocent in inquiries?
- ii) Does holding a second inquiry without involving the accused breach natural justice and due process under Article 10-A?
- iii) Is it paradoxical to allow a Constable to serve despite allegations but deny promotion to Sub-Inspector for the same?
- iv) Does withdrawing an appointment deprive an individual of their constitutional right to livelihood?

**Analysis:**

- i) Since the Court of competent jurisdiction, i.e., Magistrate Section 30, has clearly found that necessary material for commission of alleged offence is not made out from the facts of the case in addition to the fact that complainant of the case was also not interested to prosecute the case, therefore, in such an eventuality, the impugned order is without any lawful basis.
- ii) In addition, the respondent-department failed to substantiate that the petitioner was associated with the second inquiry, which runs counter to the principle of natural justice and due process embodied under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 ('the Constitution').
- iii) In the instant case, strangely and ironically enough, the petitioner found to be involved in FIR can perform his duties as a Constable, by remaining part of the force but cannot be offered appointment as Sub-Inspector... Thus, the policy, the underlying rationale and the manner in which it has been implemented in the present case create a paradoxical situation and conflicting position of the respondent-department, the answer to which is absent on the part of the respondent-department.
- iv) The impugned order of withdrawal of the appointment amounts to depriving the petitioner from the fundamental right of livelihood, as guaranteed under the Constitution, which cannot be countenanced.

**Conclusion:**

- i) An appointment cannot be withdrawn solely based on an FIR when the accused is acquitted from the case.
- ii) The Holding a second inquiry without associating the accused violates the principle of natural justice and due process under Article 10-A of the Constitution.

- iii) The policy creates a paradoxical situation by allowing the petitioner to serve as a Constable despite allegations but denying promotion to Sub-Inspector for the same.
- iv) Withdrawing an appointment deprives the petitioner of the fundamental right of livelihood guaranteed under the Constitution, which cannot be countenanced.

**37. Lahore High Court**  
**Habib-ur-Rehman v. The State and another**  
**Crl. Misc. No.60701-B of 2024**  
**Mr. Justice Ali Zia Bajwa**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4739.pdf>

**Facts:** The petitioner seeks his post-arrest bail in a case registered with police station ANF for recovery of Ice from a parcel booked in the name of petitioner for delivery abroad.

**Issues:**

- i) Which are the aspects of forensic testing in narcotic substances?
- ii) What the qualitative and quantitative tests mean, and which testing techniques are applied?
- iii) Whether the absence of quantitative analysis in forensic reports regarding narcotic substances affects the evidentiary standard required for conviction and sentencing under the CNSA (Control of Narcotic Substances Act, 1997)?

**Analysis:**

- i) In the context of narcotic substances analysis in Pakistan, particularly under the CNSA, the terms qualitative and quantitative tests refer to two key aspects of forensic testing conducted to determine the nature and quantity of narcotic substances in a sample. These tests are typically carried out by forensic labs and are crucial for evidence in narcotics cases.
- ii) A qualitative test identifies the specific type of narcotic in a sample, confirming whether it is a narcotic drug or psychotropic substance under CNSA. Using advanced techniques such as chromatography, mass spectrometry, and infrared spectroscopy, the test reveals the substance's unique chemical profile, verifying its nature and legality. On the other hand, a quantitative test determines the precise concentration of a narcotic in a sample, shaping the severity of penalties under the CNSA, where higher quantities lead to stringent sentencing. Without a forensic report confirming the exact quantity, the prosecution may struggle to meet the evidentiary standards required for conviction and sentence.
- iii) The PFSA report reveals that, out of the twelve clothing items, only four contain Ice. Although the forensic report confirms that the four clothing items were saturated with the psychotropic substance known as Ice, it does not include a quantitative analysis to determine the exact amount of Ice present. This omission leaves the precise quantity of the psychotropic substance undetermined... Without a forensic report confirming the exact quantity, the prosecution may struggle to meet the evidentiary standards required for conviction and sentence.

- Conclusion:** i) The qualitative and quantitative tests are to two key aspects of forensic testing.  
 ii) See above analysis at (ii).  
 iii) The absence of quantitative analysis in forensic reports regarding narcotic substances adversely affects the evidentiary standard required for conviction and sentencing.

**38. Lahore High Court**  
**Muhammad Khan deceased through L.Rs. v. Muhammad Akram**  
**Civil Revision No. 1750 of 2015**  
**Mr. Justice Sultan Tanvir Ahmad**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4718.pdf>

**Facts:** The predecessor of the revision-petitioner instituted civil suit with the averment that in mutation No. 6431, 09 marlas property out of the total land measuring 04 kanal 13 marla, has been incorporated by way of fraud by the respondent in collusion with the revenue officials. The learned trial Court decreed the suit. The respondent preferred civil appeal which was allowed by the learned Appellate court and dismissed the suit while setting-aside the findings of the learned trial Court. Being dissatisfied from the same, present civil revision has been instituted.

**Issue:** i) Whether a document proved in accordance with the law can have its genuineness presumed?  
 ii) Is the failure to produce attesting witnesses fatal to the authenticity of a document when the execution of the document is not denied?

**Analysis:** i) It is trite that once a document has been proved in accordance with law, the genuineness of its contents can be presumed and the rule that the ‘document speaks for itself’ (*acta probant sese ipsa*) can be deployed. The rationale behind the presumptions attached to written documents stem out of both principle as well as policy. The presumptions are a matter of principle because written documents are, by their very nature, to be accorded a higher degree of credibility as opposed to oral evidence; otherwise, it would bring uncertainty and chaos if written documents (and valuable rights, if any, attached to them) were allowed to be set aside on the basis of oral evidence.  
 ii) So far as the argument regarding failing to produce attesting witness by the respondent-side is concerned, the execution of the mutation is not denied by Muhammad Khan-deceased himself, therefore, examination of attesting witness is not fatal. Even otherwise, the best evidence about the contents of a document is the document itself.

**Conclusion:** i) Once a document has been proved in accordance with law, the genuineness of its contents can be presumed to be correct.  
 ii) See above analysis No. ii

**39. Lahore High Court**  
**Shahid Hussain v. Abdul Jabbar Tassaduq**  
**R. F. A. No. 92515 of 2017**  
**Mr. Justice Sultan Tanvir Ahmad**  
<https://sys.lhc.gov.pk/appjudgments/2024LHC4970.pdf>

**Facts:** A lower court decision was challenged that dismissed a suit seeking repayment of a loan based on a promissory note. The initial decision favored the applicant, but on appeal, the case was sent back for retrial with specific issues to be examined. During the retrial, the applicant was given multiple chances to present evidence but ultimately failed to do so. As a result, the trial court dismissed the suit, leading the applicant to file the current appeal to contest the dismissal.

**Issues:**

- i) Is the trial court obligated to strictly follow the directives of the higher court's remand order?
- ii) Is the trial court required to re-admit the case under its original number and retain pre-remand evidence according to Order XLI Rule 23 Civil Procedure Code (CPC)?
- iii) After remand of case, did closing evidence under Order XVII Rule 3 CPC comply with settled law?

**Analysis:**

- i) It is well settled principle that on remand the learned Court trying the suit has to regulate the proceedings or proceed with the case in terms of order of remand passed by the higher Court as settled in Jameel Ahmed 8 case. Attempt to side track issue or decision in a manner, not directed by Higher Court, can result into defiance of remand order.
- ii) Perusal of Order XLI Rule 23 of the Code does not reflect if the legislature has envisaged to discard the pre-remand evidence altogether. It says the evidence recorded during the trial shall be the evidence after remand, which is subject to all just exceptions. The case has to be re-admitted by the learned trial Court on the number allocated to it originally in the register.
- iii) Now coming to another aspect of the argument regarding closing the evidence of the plaintiff. In this regard learned counsel for the appellant relied on Hasham Khan and others case (supra) and stated that even in case of failure of party to comply with order to produce evidence, the Court can ask the failing party to record its statement and then to proceed with the matter. There is no dispute as to this settled law but the record reflects that while closing right to produce evidence or invoking penal provision of Order XVII Rule 3 of the Code no violation of settled law has taken place.

**Conclusion:**

- i) The trial court must strictly follow the higher court's remand order; any deviation may be deemed defiance.
- ii) The trial court must re-admit the case under its original number and retain pre-remand evidence subject to valid exceptions.
- iii) Closing evidence after remand complied with settled law.

## **LATEST LEGISLATION/AMENDMENTS**

1. Vide Constitution (Twenty-sixth Amendment) Act, 2024, insertion of new Articles 9A, 191A, 202A, amendments in Articles 38, 48, 81, 111, 175A, 177, 179, 184, 185, 187, 193, 199, 203C, 203D, 208, 215, 229, 230, 255, 259 and fourth schedule, substitution of Articles 186A, 209 were made in the Constitution of Pakistan.
2. Vide Deposit Protection Corporation (Amendment) Act 2024, amendments in Preamble, sections 2, 5 to 10, 14, 15, 17, 18, 20, 25, 34, 36, insertion of section 5A, 22A, 22B, 22C, 25A, substitution of section 21, 22 & 35 were made in the Deposit Protection Corporation Act, 2016.
3. The Special Courts were established vide Special Court (Overseas Pakistan Property) Act, 2024 for adjudication of petitions in respect of immovable properties of overseas Pakistanis.
4. Vide Banking Companies (Amendment) Act, 2024, the amendments were made in sections 3A, 5, 14, 23, 25, 26A, 29, 30, 31, 33, 34, 41, 41A, 41C, 41D, heading after section 43, 49, 52, 58, 59, 82D, 83 & 84, omission of 15B, 25AA & 47, substitution of 15C, 42, 45, 46, 51 & 94, insertion of section 36, heading and new sections after section 39, new heading after section 39L, new heading after section 42, new section after 93C & fourth schedule of the Banking Companies Ordinance, 1962.
5. Vide Supreme Court (Number of Judges) (Amendment) Act, 2024, substitution of section 2 was made in the Supreme Court (Number of Judges) Act, 1997.
6. Vide Supreme Court (Practice and Procedure) (Amendment) Act, 2024, substitution of preamble & section 5, amendments of sections 1 & 2, omission of sections 3 & 4 and insertion of sections 2A, 7A & 7B were made in the Supreme Court (Practice and procedure) Act, 2023.
7. Vide Islamabad High Court (Amendment) Act, 2024, amendment was made in section 3 of the Islamabad High Court Act, 2010.
8. Vide Pakistan Army (Amendment) Act, 2024, amendments were in sections 8A & 8B and substitution of section 8C of the Pakistan Army Act, 1952.
9. Vide Pakistan Air Force (Amendment) Act, 2024, amendments were made in sections 10A, 10B & 10C of the Pakistan Air Force Act, 1953.
10. Vide Pakistan Navy (Amendment) Act, 2024, amendments were in made in sections 14A & 14B and substitution of section 14C of the Pakistan Navy Ordinance 1961.
11. Vide notification No. SO (E&M)3-4/2024, the amendment was made in para (4) of the second schedule of The Punjab Motor Vehicles Rules, 1969.

## **SELECTED ARTICLES**

### **1. THE CAMBRIDGE LAW JOURNAL**

<https://www.cambridge.org/core/journals/cambridge-law-journal/article/digitising-the-uk-securities-market-the-case-against-and-a-proposal-to-enfranchise-indirect-investors/AA573CDC2B76E14B441A4858167A18FF>

#### **Digitising The Uk Securities Market: The Case Against And A Proposal To Enfranchise Indirect Investors By Eva Micheler and Elena Christine Zaccaria**

*A taskforce, appointed by HM Treasury, has recently proposed legislation to eliminate certificated (paper) shares and to require the investors currently holding paper shares to hold them indirectly through nominees. It has also suggested that disclosure combined with a common messaging protocol will enable the market to improve the ability of indirect shareholders to exercise their rights. In this paper we make a case against legislation eliminating paper certificates. We argue that the industry does not need the Government to remove paper certificates. If they want paper certificates to disappear, they should develop a model for holding uncertificated shares directly that is affordable for retail investors. The Government should nevertheless intervene. It should encourage the Competition and Markets Authority to investigate the price structure of accounts for holding uncertificated shares directly with CREST, which operates as a monopoly provider for such accounts in the UK. We further explain that the current system for holding shares indirectly disenfranchises investors and argue that this not only affects investors but also deprives issuers of oversight of their governance. We use empirical evidence to explain that disclosure combined with a common messaging protocol is unlikely to cause the market to develop a system that better enfranchises indirect shareholders. Consequently, we propose legislation to give indirect investors better access to shareholder rights.*

### **2. THE CAMBRIDGE LAW JOURNAL**

<https://www.cambridge.org/core/journals/cambridge-law-journal/article/no-reflective-loss-principle-is-not-an-oldfashioned-corporate-law-relic/F34749B479AAB79425A9B9EB6C77CB0E>

#### **The No Reflective Loss Principle Is Not An Old-Fashioned Corporate Law Relic By Varghese George Thekkel**

*Shareholders are not allowed to bring actions for damages due to a fall in share value or loss of dividend, which are “reflective” of their company’s loss. Later, this principle also found its application to “reflective” losses of employees and creditors. The Supreme Court, however, in *Marex Financial v Sevilleja*, unanimously held that the principle would apply only to shareholders and not to creditors. The article argues that, while the majority opinion in the *Marex* decision is reasonably balanced, the minority opinion went a step further by even doubting the very existence of the no reflective loss principle without properly appreciating what shareholding entails. If the minority’s position becomes the law, it will jeopardise companies’ existence as separate legal entities with the capacity to decide with respect to their assets. Further, if the protection of the principle is removed, companies’ counterparties will have to worry constantly about facing numerous direct*

shareholders' actions, whether they settle the dispute with the company or not. As a result, if the minority view becomes the law, it can potentially make the company a less dependable commercial partner.

### 3. **THE YALE LAW JOURNAL**

<https://www.yalelawjournal.org/forum/bind-us-together-coalitional-public-policy-advocacy-in-medical-legal-partnerships>

#### **Bind Us Together: Coalitional Public Policy Advocacy in Medical-Legal Partnerships By James Bhandary-Alexander & Dina Shek**

*The Medical-Legal Partnership (MLP) model promotes the provision of direct legal services, interdisciplinary training, and public policy advocacy by lawyers situated in sites of medical care. Although scholars have called on MLPs to be more proficient in driving policy change, MLPs do not have a consistent record of doing so. But where they have achieved success, MLPs have done so by working in local coalitions. Building on this history, this Essay introduces a methodology of coalition building for MLPs to advance public policy goals more successfully and proposes metrics that MLPs can use to gauge their success. Through storytelling and analysis of our own experiences with coalition work in Connecticut and in Hawai'i, we document how coalition work can achieve policy wins. The Essay concludes with some observations regarding obstacles to coalitional practice and suggests that legal education and training will be essential to promoting this vision of public policy advocacy.*

### 4. **MANUPATRA**

<https://articles.manupatra.com/article-details/Right-to-Repair-Unlocking-the-Hidden-Potential-of-Consumer-Empowerment>

#### **Right to Repair: Unlocking the Hidden Potential of Consumer Empowerment By Vidhan Dixit**

*When something breaks, what is the first thought that crosses your mind? to replace or to repair? Replacing something requires switching to an alternative source of the same product, which incurs additional costs and generates a lot of waste. especially E-waste The World Economic Forum estimates that the amount of e-waste produced annually is about 50 million metric tons, and by 2030, it is expected that it will get close to 74 million tons 2. This extreme expansion was fuelled due to shorter life cycles, increased utilization rates, and limited choices for recycling and repair. To mitigate the production of electronic waste, an alternative plan of action arrives. which is to repair something Even though this is a fundamentally straightforward idea, little research has been done to fully comprehend this closed-loop alternative, and its application<sup>3</sup> . Repairing an object entails determining its issue and then taking the necessary steps to fix it so that it may once again perform as intended.<sup>4</sup> Various government organizations around the world recognized the importance of product repair and implemented legislation to support its growth. The Government of America was the pioneer in formulating a course of action. The statute known as the Digital Fair Repair was passed by them<sup>5</sup> . Also, The United Kingdom has declared that*



manufacturers are required by law to supply tools and spare parts. In July 2021, the Federal Trade Commission released a statement endorsing the importance of implementing strong measures against manufacturers who impose unjust repair limitations on independent contractors and customer repair establishments.

## 5. **MANUPATRA**

<https://articles.manupatra.com/article-details/LEGAL-RECOGNITION-OF-SUCCESSION-RIGHTS-OF-WOMEN-UNDER-HINDU-LAW>

### **Legal Recognition of Succession Rights of Women Under Hindu Law By Mizana Kabeer**

*The legal standing of India and the issue of women's property rights have ignited discussions. There are a variety of viewpoints on this. But the "WOMEN" of our nation are the ones whom, it affects. Even after 71 years of independence, the situation for women in our nation is still not acceptable. Females are still subjected to prejudice when it pertains to getting property, despite the fact that the Indian Constitution and other statutes provide them the same title and ownership privileges. The concept of property ownership is one of the core components of every system of law. Since ladies are obligated to stay true to conventional social standards, which have left them with fewer alternatives than males, females in India are especially in need of inheritance rights. Hindu women's property rights have developed as a result of the ongoing conflict between patriarchal Indian society and the country's progressive forces. From the inception of Indian society, Hindu women's capacity to acquire estate has been constrained; while they were not wholly forbidden from accomplishing so, their role was minor. Contemporary society and evolving circumstances have made it clear that women need to have the same status and rights as men for the country to advance. As a result, the Hindu Succession Act of 1956 was a key measure establishing the ability of women to acquire property. Section 6 was revised, adding daughters as beneficiaries, in 2005, which became the latest noteworthy alteration regarding women's ability to inherit estate. This research article presents an outline of the development of succession rights of females under Hindu law over time. This paper also seeks to comprehend numerous judicial rulings about women's succession rights. Furthermore, the article concludes with recommendations that suggest reforms to uplift the status of women.*

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